
United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN FIVE VOLUMES)

EBNER GOLD MINING COMPANY (a Corporation),
Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,
Defendant in Error.

VOLUME IV.
(Pages 1105 to 1512, Inclusive.)

Upon Writ of Error to the United States District Court of
the District of Alaska, Division No. 1.

FILED

DEC 27 1912

No. 2155

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(Testimony of Hugh Tracy.)

Q. The ditch was there when you located the claim?

A. Yes.

Q. Who else owns any claim there that they cross?

A. I don't know.

Q. You don't know whether the Treadwell located their water rights first or whether the other men located their claims first? A. No; I do not.

Q. And it is from this knowledge that you have that you testify to the general custom that Mr. Hellenenthal has questioned you about? A. That is all.

Witness excused. [1018]

[Testimony of Victor Lundquist, for Defendant.]

VICTOR LUNDQUIST, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you resided here?

A. Since 1887.

Q. Have you done any mining in this district?

A. I work on mines.

Q. Have you helped build any ditches? A. No.

Q. Do you know the customs of miners in the district surrounding Juneau that governs the acquisition of water rights?

(Same general objection. Also no foundation laid. Objection overruled and exception allowed.)

Q. Do you know the custom—do you know what the custom is? A. No, I do not.

Q. Do you know what the custom of miners is with

(Testimony of Victor Lundquist.)

reference to the right to build ditches across mining claims?

A. Yes; as far as I understand you can build—

Q. Let me ask you this: what right has anyone to build ditches and canals across mining claims under the custom of miners, as you understand them in this district?

A. They have a right providing he gets the right from the man who has a right to the water first—he has to get permission from him to get the water out of the creek and build a flume and get the water. That is the way I understand it.

Q. If a man is trying to get water from the creek to the water right and there is a mining claim between him and the creek, has he the right to cross that with his ditch under the custom of miners as you understand it?

A. I don't know anything about that. [1019]

[**Testimony of Charles Morse, for Defendant.**]

CHARLES MORSE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you lived here?

A. I have been here since 1882.

Q. Have you followed the business of mining, more or less, since you have been in the country?

A. I have been mining more or less.

Q. Did you mine before you came here?

A. Yes, sir, in Montana.

(Testimony of Charles Morse.)

Q. How many years did you mine in Montana?

A. I was there from 1866 to 1874.

Q. Do you know what the custom of miners is in the district surrounding Juneau governing the acquisition of water rights?

A. All I know is what the miners have done here. I never made any.

Q. You may state how the right to the use of water can be acquired in the running streams in this locality under the miners' custom as you know it.

(Same general objection. Overruled. Exception.)

A. Wherever I have been you post your notice and then go to work on your ditch and take out the water and utilize it.

Q. What right has the water appropriator or the one seeking to acquire the water right to cross unpatented mining claims of others, both quartz and placer, with his ditches, canals, flumes and dams and other necessary structures to divert and convey his water, if any?

A. I know outside of here we have crossed properties, different [1020] claims, with ditches.

Q. And that right exists under the custom?

A. Yes; that is the way the miners' laws were those days, in Montana and other places.

Cross-examination.

(By Judge WINN.)

Q. In Montana, do you say?

A. Yes, in the early days.

Q. You know there is a United States statute

(Testimony of Charles Morse.)

where you go on Government land to locate water and locate that before the claims are located down below that you can cross the claims with your water—is that the custom you refer to?

A. The way I mean it is under the miners' law.

Q. Did you ever operate any mines in Silver Bow Basin? A. I never did operate any here.

Q. Did you ever run any ditches yourself?

A. Yes, I did that in Montana.

Q. You never ran any ditches across anybody's land in Alaska?

A. I never had occasion to but I saw others do it.

Q. Up here in the Basin?

A. No; not up here—I have been up here and looked at them, the Coombs & Campbell and Hartrader ditches.

Q. You don't know anything about when Hartrader and those people took up their water rights?

A. No, I don't know where—everything was staked in the Basin when I came here, every foot of ground up there—placer mines and there was some quartz claims taken. There was Archie Campbell had a quartz claim staked there and Bennett had a quartz claim and another one called, I think the Morris G.

Q. You heard Hartrader and Charley Boyle and the rest of them [1021] testify a while ago?

A. Yes.

Q. Those are the same ditches you know about?

A. Yes; I just merely seen them up there.

Q. You heard their testimony about going on land that was not claimed by anybody to locate the water?

(Testimony of Charles Morse.)

A. Yes.

Q. You don't know anything more about that than you have heard them tell? A. No, I do not.

Q. Did you ever attend any of these miners' meetings in early days? A. Yes. I did.

Q. Those miners' rules and regulations were all written out and you had your books, records, etc., and the rights that people were exercising then they used by reason of those rules and regulations?

A. Yes, they used them.

Q. You have never seen a miners' meeting here lately? A. No.

Q. Do you know when the last miners' meeting was ever held here, here in the Harris mining district?

A. I couldn't say, hardly.

Q. Did you attend the trial of that Perseverance case over the Lurvey Creek water right?

A. No, I wasn't here at that time.

Q. For fifteen or twenty years there has not been any miners' meeting here, has there, under those rules?

A. No; there has not been a miners' meeting since.

Q. Since the courts have been established here, there never has been a miners' meeting here in the district, has there? A. No, not that I know of.

Q. Since the first Judge has been here to hold court in Juneau? A. No. [1022]

[Testimony of Thomas Wilson, for Defendant.]

THOMAS WILSON, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. When did you come to Alaska? A. 1884.

Q. How old are you? A. 68.

Q. How long have you mined?

A. About forty years.

Q. Do you know the custom of miners in the mining district surrounding Juneau and the Juneau gold belt?

A. I never seen any in Juneau to know anything about them.

Q. Do you know the custom of miners with respect to the appropriation of water—how they take up water rights?

A. They take them up and use it right along every place I have been except here, and here I think they have done the same.

Q. What right under the custom of miners here, as you understand it, has anyone building a ditch to take up water, to cross mining claims of other people, quartz and placer claims?

A. I never heard any trouble about it going across them.

(Same general objection goes to this line of testimony.)

Cross-examination.

(By Judge WINN.)

Q. You came here in 1884? A. Yes, sir.

(Testimony of Thomas Wilson.)

Q. Do you know that some time prior to that time they had an organization of what is called the Harris mining district here? A. Yes, I heard of it.

Q. Did you ever attend a meeting of the miners here in early days? A. No.

Q. Since you have been here, since 1884, have you ever known of any such meeting being held of the miners?

A. They held one in 1885—it was a rough affair and I went away. I didn't want to be in it. [1023]

Q. Kind of a rough affair?

A. Kind of a rough affair, or I thought it would be.

Q. And there has been no attempt since that last affair to hold a meeting of the miners? A. No, sir.

Q. You know that they had some rules and regulations and had some books they kept them in?

A. Yes, I heard of that.

Q. And had little pamphlets that they issued then in those days? A. Yes, sir.

Q. But there never has been any attempt to live up to those miners' rules and regulations since 1885?

A. No, sir; there has not.

Q. Did you hear Mr. Hartrader and some others testifying about the use of the water in the Basin in early days? A. Yes; I saw a ditch there in 1885.

Q. Those ditches are the same ones you heard Charley Boyle describe and Hartrader and I think Charley Morse—those are the same ditches you saw up the Basin? A. Yes, sir.

Q. Where is the Hartrader ditch and the Bulger

(Testimony of Thomas Wilson.)

ditch? A. There was three of them, I think.

Q. And as to how they got across the property with the ditches, whether they got the consent of the owners or not, you don't know?

A. No; I never heard a word. I helped dig one but I never heard a word about crossing the claims.

Q. You never dug a ditch there yourself?

A. No, I never owned any there—that is the reason I know so little about it.

Witness excused. [1024]

[**Testimony of Dan Kennedy, for Defendant.**]

DAN KENNEDY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live? A. In Juneau.

Q. How long have you lived here?

A. Since 1881.

Q. Have you followed the business of mining in this district?

A. For the first two years—1881 and 1882.

Q. Do you know what the custom of miners is in the Juneau mining district, including the Harris mining district, relating to the appropriation and acquisition of water rights?

(This testimony is subject to the same general objection and exception.)

A. As far as the water rights, there was very little trouble with water rights.

Q. How can a man get a water right under the custom of miners?

(Testimony of Dan Kennedy.)

A. If you want a water right, providing another party owned the ground, you would have to go and ask their privilege and you could take it. You had to do them no injury in no shape or form—among the miners themselves—you could do them no injury.

Q. If you didn't do any injury could you cross another man's mining claim?

A. Providing you didn't put the flume or whatever you had in his road—if you did you would have to move it.

Q. If you didn't hurt him you would have the right under the miners' rules to build a ditch across his ground?

A. You would have to ask them for the privilege first, as a rule—when they had their first meeting, that was in 1881, as I understand it, or 1882, I think it was 1881.

Q. How was it since? [1025]

A. There was nothing about it since that I know of. It appeared there was nobody wanted the water but what was using it.

Q. Who had the right to take up water?

A. Anybody had the right to take up water where it was Government land.

Q. Could they take it up if they didn't have a use for it?

A. You can't let no water run to waste if another party wants it.

Witness excused.

[Testimony of Charles Houser, for Defendant.]

CHARLES HOUSER, called and sworn as a witness for the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Juneau.

Q. How long have you lived here?

A. I came to Juneau in 1886.

Q. What has been your business since you have been here? A. Mining, mostly, and prospecting.

Q. In connection with your mining work have you had any occasion to build ditches or appropriate water rights?

A. Not around right here, no—in the interior, yes.

Q. Do you know what the custom of miners in the Harris mining district and other mining districts adjoining the Harris mining district in the Juneau gold belt is with reference to the appropriation of water or the acquisition of water rights in general?

A. No, I do not.

Q. You don't know the customs of miners in this district?

A. I have never built any in this district and never mined in the district.

Witness excused. [1026]

[Testimony of Charles Malloy, for Defendant.]

CHARLES MALLOY, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Right on the beach.

Q. How long have you lived in Juneau?

A. I have lived here sixteen years.

(Testimony of Charles Malloy.)

Q. What business have you followed since you have been here?

A. I followed most everything to make a dollar.

Q. You have not mined much lately here?

A. Not in the Basin. I have been mining down on the beach a good deal.

Q. Not around the Basin? A. No.

Witness excused.

[Testimony of R. G. Whalen, for Defendant
(Recalled).]

Mr. WHALEN, recalled:

(By Mr. SHACKLEFORD.)

Q. I will ask you if this morning you have made an investigation of the width of Gold Creek as same is platted on exhibit 7 as it passes through the Lotta claim. A. I did.

Q. Did anybody go with you? A. Mr. Lindsey.

Q. Tell the Court what you did.

A. We measured the width of the stream across the face of the Alaska-Juneau dam and it measured, the dam itself—the width across the stream—it was 25 feet, but that is not perpendicularly across the stream, at a point about 12 feet above the dam where the stream flowed between a large boulder and the bank, the stream flowed within a width of 6 feet.
[1027]

By the COURT.—You mean at right angles across the stream? A. Yes, sir; at right angles.

Q. These measurements were taken with a tape-line? A. Yes, sir.

Q. One on one side of the stream and one on the

(Testimony of R. G. Whalen.)

other? A. Yes, sir.

Q. Give us the measurements.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. At a point about 100 feet below the Jualpa intake the width was 6 feet; at the Jualpa intake the width of the creek was 22 feet; 100 feet above the Jualpa intake the width of the creek was 12 feet. At the point as near as we could tell where the upper side line of the Lotta as staked on the ground would intersect Gold Creek the width was 15½ feet.

Q. Indicate on this exhibit 7 the place where the Jualpa high line flume intersects the creek? Mark a "J" there?

(Witness does so.)

Q. How did that correspond with the creek as platted on the ground at the point "J"?

A. At the point "J" it doesn't correspond, but at the other points it does. The creek is at a considerably higher stage than when we measured it last fall, and there is a flat bench that the creek has covered with sort of shallow water at one side, above the point "J."

Q. At the present time it has been raining two days? A. Yes, and the snow is melting.

Q. And this is the 6th day of June? A. Yes.

Q. Your measurements were made to-day, on the 6th of June.

A. Yes, sir; on the 6th of June. [1028]

(Testimony of R. G. Whalen.)

Cross-examination.

(By Judge WINN.)

Q. It is a pretty cold 6th of June too, is it not?

A. Rather cold for the 6th day of June.

Q. Quite a little snow has fallen up the mountains—there was last night, was there not?

A. I don't know about last night; there was a little falling this morning.

Q. Were you up there to see how many of the company's stamps were falling this morning on account of the water? A. No, I have not.

Q. Did you measure this water on the level of the surface of the flume?

A. On the level of the surface of the flume.

Q. As you found it to-day?

A. As I found it to-day.

Witness excused.

[Testimony of I. N. Moore, for Defendant.]

I. N. MOORE, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. You live in Juneau? A. Yes, sir.

Q. How long have you lived here?

A. Since the spring of 1886.

Q. What business have you followed since you came here? A. Most mining and boating, etc.

Q. What business did you follow before you came to Juneau? A. Mining, mostly. [1029]

Q. What districts did you mine in?

A. In Humboldt County, Nevada; in New Mexico,

(Testimony of I. N. Moore.)

near Silver City; in Arizona, in the Clifton Copper Mines, and also to some extent in Minnesota, not in the iron mines, however—mined there for gold but didn't find much.

Q. Since you have been in Alaska you have been quartz mining principally?

A. Yes, sir; mostly my own—prospecting and quartz mining.

Q. Do you know the custom of miners with reference to the appropriation of water and the acquisition of water rights in the Juneau gold belt?

A. I don't definitely know the custom or practice or law, but I always supposed—

Q. How, under your understanding of the custom in this district, can rights to the use of water be acquired?

A. I understand so, yes—according to the laws; it is Government water.

Q. Now, where water is running in a running stream that has not been previously appropriated by anybody else, how can anybody acquire the right to the use of the water running in such streams under the custom of miners?

Judge WINN.—Do you know what the custom is here among miners?

A. No, not definitely—in practice, I don't, because I don't know of any instance where they have taken up water and used it or utilized it. I only know what I have seen and hear and read about it.

(By Mr. HELLENTHAL.)

Q. From what you understand about the custom,

(Testimony of I. N. Moore.)

how can the right to the use of water in a running stream that has not been previously appropriated by anybody else be acquired?

Judge WINN.—We object. No qualification.

Objection overruled. Plaintiff allowed an exception. [1030]

A. He can locate, make location of it, record it and divert it from the regular creek and return it again if he wants to, and state the number of inches you wish to take and where you are to use it and what for—keep a record of it.

Q. What, if any, right under the custom, as you understand it, in the Juneau district and the surrounding districts, surrounding the Harris mining district, has one seeking to appropriate water in the method you have described, to cross intervening mining claims with ditches and flumes?

A. I don't know of any particular instance of it. I don't know that there has been any objection to it. I suppose they could do that, that was my supposition—they could take it across a man's claim—where it is located off his claim whether they could take it across or not, I don't know about that definitely.

(By Judge WINN.)

Q. What you mean is, water that belongs to the Government and not anybody else—that is where a man goes on United States Government land and locates the water? A. Yes.

Q. You have never known of any instance where a man has a quartz mining claim of anybody trying to get on that claim and take the water away and convey

(Testimony of I. N. Moore.)

it off somewhere else to be used?

A. No, sir; I don't know of any such instance.

Q. You never have known of any instance where one miner has undertaken to go on the property of another and take the water off?

A. No, I don't think I do.

Q. It is different where they go on United States Government land and take the water off? A. Yes.

[1031]

[Testimony of F. W. Bradley, for Defendant.]

F. W. BRADLEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. What is your name and residence?

A. F. W. Bradley; San Francisco.

Q. You are the president of the defendant company in this case? A. I am.

Q. How long have you been associated with the Alaska-Juneau Company. A. Eleven years.

Q. How long have you been its president?

A. Eleven years.

Q. I will call your attention to an exhibit marked Defendant's Exhibit #11, and ask you to state to the Court in a general way what that represents and how it was made and for what purpose it was made.

A. It represents in a general way the property of the Alaska-Juneau Gold Mining Company.

Q. And I presume it has been made to illustrate the location of that property with reference to Gold Creek and Gastineau Channel, showing the different outlets

(Testimony of F. W. Bradley.)

by which Gastineau Channel can be reached. Now, referring to the strip of land running from Snowslide Gulch around Gold Creek and down the hillside to a point marked "proposed 200-stamp mill—I will ask you to explain how that's platted with reference to the company's holdings.

A. It is supposed to represent a series of mining locations to cover a right of way for the tramway and flume-line.

Q. You understand that a portion of this ground is contested? A. Yes, sir. [1032]

Q. With reference to the property of the Alaska-Juneau Company I want you to give the Court a history of its development, together with a history of the acquisition of various lines of claims leading up to it and the proposed methods as to the development.

A. I first visited the property in the summer of 1900, eleven years ago. I found at that time Superintendent Archie Nevins in charge and that he had a scheme outlined for operating the property—he had a scheme outlined for running a tunnel from Snowslide Gulch, and to protect that scheme he had locations made called the Colorado, Idaho, Oregon and Wyoming and a number of others, I believe, which locations had been made in 1899. He called my attention to his plan—

Objected to as hearsay. Objection overruled. Plaintiff allowed an exception.

WITNESS.—(Continuing.) —and urged that it be carried out. I went over the property at that time and it didn't appeal to me as particularly attractive.

(Testimony of F. W. Bradley.)

The working season was then but five months in the year. It has been no longer since, because there has been no change made in the equipment of the property and each year since the thirty-stamp mill has been run for information. The grade of the rock has been too low to permit working the property for any profit with the thirty-stamp mill, and all the work that has been done since then has been for the purpose of securing information that would justify the carrying out of the only feasible scheme for working the property on a scale that would yield a profit, and in order to work the property the year round the mill must be at sea level, in order that there may be a proper distribution made of the tailings, and in order that the salt water may be used for battery [1033] purposes when the fresh water supply is frozen up. The tunnel from Snowslide Gulch is a comparatively short tunnel to the vein formation, for the reason that there is a long fault traverses the country along the line of Snowslide Gulch and practically through the centre of the Alaska-Juneau Company's property which throws the vein towards Gold Creek and Snowslide Gulch. Because of the fault the running of the tunnel would be comparatively easy and the distance to cut the vein would be short, it would be within 3,000 feet, and then would be crosscut, an addition 2,500 feet would reach the portion of the property in depth that we are working now. The running of that tunnel would develop the property about a thousand feet deeper than it has yet been developed, rather 800 feet deeper than it has yet been developed, and if any ore

(Testimony of F. W. Bradley.)

is found in the running of that tunnel to justify underground mining any time, then the proposed sea level tunnel would be run. The property does not justify the running of that tunnel, now, because the length is too great and the expenditure would be altogether out of the question, would be out of all proportion to the net value of any ores developed in the Alaska-Juneau mine so far, but we have been constantly developing and sampling the property and it has reached a stage now where the original scheme is justified. The company is now ready and prepared to run the Snowslide Gulch tunnel tramway and flume to run around the hill.

Q. (By the COURT.) How many men have you employed on this property during the working season on the average, in the mill?

A. I should say thirty-five—about the average during the working season. [1034]

Q. With reference to reaching the ore bodies in the Juneau gold belt, what would be the difference between using the tunnel from Snowslide Gulch and the tunnel from Gastineau Channel direct in distance, approximately?

A. The tunnel from Gastineau Channel direct to reach the ore bodies on our dip underneath where they are now being mined would be approximately 9000 feet and the tunnel from Snowslide Gulch to reach that portion of the vein that has been faulted towards Gold Creek would be about from 2,500 to 3,000 feet.

Q. And as I understand it, the dip of the ore bodies in that belt is away from Gastineau Channel?

(Testimony of F. W. Bradley.)

A. It is away from Gastineau Channel; yes.

Q. Describe in a general way the work that has been done on that property during the last few years toward developing it.

A. The fault which runs in a direct line, in a general line from the thirty-stamp mill shown on the plat towards Snowslide Gulch, most of the mining that has been done—every season there has been mining over different portions of the surface of the property and there has been two long crosscut tunnels driven at an elevation of about 1,300 feet above sea level, and from these lower crosscut tunnels there has been slabs blasted off the sides. Those slabs were originally milled in the five-stamp mill built at the mouth of the tunnel for the purpose of sampling the ore found in the tunnel. Since that the ore has been hoisted to the thirty-stamp mill and sampled there. There has also been a great many tests made in sorting the rock to see if a better rate of profit could not be worked out. There has also been [1035] milling tests made of the rock that lies in between the bands of the vein matter—that is all payable grade.

Q. From the time you took charge of the property to the present day what has been the intention with reference to the holding of the Colorado and these claims indicated along here in the driving toward the main body from the tunnel?

A. It has been the intention to hold them, and to fortify that intention they have been patented for the purpose of protecting the right of way for the tunnel.

Adjourned until to-morrow at 10 A. M.

(Testimony of F. W. Bradley.)

June 7, 1911—Morning Session.

Q. It has been claimed in this case that the idea of practically adopting and developing the Snowslide Gulch site by the Alaska-Juneau people was adopted after Mr. Bent and his people came up here last summer. I wish you would tell the Court what was done with reference to that site during the previous year looking toward the method of locating a railroad, etc.?

A. The summer of 1909 when I was up here I took up with you and Mr. Kinzie the matter of surveying and filing a right of way for a railroad line from the mouth of the proposed Snowslide tunnel to the point on the hill above the site of the proposed mill and after considerable discussion it was concluded that that would not be feasible. I then asked Mr. Kinzie to locate a string of quartz locations covering whatever vacant ground there might be along the line of the proposed railroad for a tram line.

Q. I wish you would explain just what preparation you made with reference to getting the money and the arrangement with reference to the actual intention to develop this property [1036] along the line of the Snowslide Gulch development?

A. The matter has all been arranged for and we are already running a tunnel that is proposed to take the water through to protect from snowslides; that when that tunnel cuts the line of the fault I testified to yesterday we will then turn on the line of that fault—

Judge WINN.—I object to any future things they intend to do or expect to do as incompetent, irrelevant and immaterial and not tending to prove any of the

(Testimony of F. W. Bradley.)

issues of the case.

Objection overruled. Plaintiff allowed an exception.

A. When this flume tunnel cuts the line of that fault we will then proceed on the line of that fault within the property of the Alaska-Juneau Company with this Snowslide Gulch tunnel.

Q. I will ask you if you have made the arrangements with the Alaska-Juneau Company to insure control of the same through a syndicate—have you arranged with the syndicate, made proper financial arrangements to carry the thing through?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The Alaska-Juneau Company is a West Virginia corporation with nonassessable stock. Up to this time, with the exception of the first year of operations, there has been no profit whatever—whatever profit has been made has been put back into the development of the property. It therefore became necessary for the Alaska-Juneau Company to arrange for some treasury stock and to use this treasury stock—

Judge WINN.—We object to that as not the best evidence, and demand the production of the books so we can cross-examine Mr. Bradley about these matters.

By the COURT.—The objection to the evidence offered is overruled. [1037] When we come to your cross-examination the matter of the demand for the production of the books will be ruled on then. Plaintiff allowed an exception.

(Testimony of F. W. Bradley.)

WITNESS.—(Continuing.) The company arranged for the issue of treasury stock to pay for the running of this tunnel from Snowslide Gulch and also to pay for the running of the railroad track, the tram track around the hillside and the building of a mill on the beach.

Cross-examination.

(By Judge WINN.)

Q. You have been a witness in a great many mining cases, have you not?

A. I have never been a professional witness; no.

Q. You have been a witness in a great many cases where your interests are concerned and where your interests have not been concerned?

A. Where my interests have been concerned as much as they have in this case.

Q. You were one of the expert witnesses in Dalton against the Katalla Company?

A. No, sir; I was asked to give a deposition and I gave it.

Q. Don't you consider that the same as being a witness?

A. No, I didn't consider that being an expert witness.

Q. You did give expert testimony in that case, did you not?

A. I had to answer certain questions in the deposition because it was demanded of me.

Q. That is one case you gave a deposition in that you were not interested in? A. Yes.

Q. How many more?

(Testimony of F. W. Bradley.)

A. None that I know of. I may have given some depositions in other cases but I don't remember of any more—I can't recall any now. [1038]

Q. How long have you been consulting engineer of the combined interests of the Treadwell?

A. Eleven years.

Q. How long have you been consulting engineer of the Alaska-Juneau Company?

A. I have been president of the Alaska-Juneau Company for eleven years.

Q. How long have you been a stockholder in the Alaska-Juneau? A. Eleven years.

Q. Are you also a stockholder in the allied interests over across the way, the Treadwell people?

A. I was.

Q. Do you classify the Alaska-Juneau Company as belonging to the same allied interests?

A. No, I do not; it is entirely separate ownership.

Q. You are one common stockholder in the companies—how many more common stockholders are there in those companies?

A. None that I know of.

Q. You would know if there were any?

A. I would know it; yes.

Q. Are you familiar with the books of the Alaska-Juneau Company—the corporate books?

A. Yes, sir.

Q. Have you them here? A. No.

Q. Where is the head office of that company?

A. My offices in San Francisco.

Q. That is the head office of the Alaska-Juneau

(Testimony of F. W. Bradley.)

Company? A. Yes.

Q. Are all the corporate books down there?
[1039] A. They are.

Q. It would be useless, then, for me to demand the production of the books here during this trial—you couldn't get them here? A. Not very well.

Judge WINN.—For the sake of the record, I do demand the production of the stock-books and all the books pertaining to the Alaska-Juneau Company, as a corporation, during this trial.

Q. You can produce in this case—you have—the reports that have been made by the office over there, they are under control, by Mr. Kinzie and his clerks on the running and operating expenses and the outlay and income of the Alaska-Juneau Company, can you not? A. That is all accessible, yes, sir.

Q. I wish you would have them brought over here. You first came to Juneau in 1900? A. Yes, sir.

Q. You were a stockholder in the Alaska-Juneau Company prior to your first visit to Alaska?

A. I was; yes.

Q. And also was consulting engineer of the allied interests over at Treadwell before you came here—or were you?

A. That was the occasion of my first visit here.

Q. You have been through all of the upper workings, underground workings, of the Alaska-Juneau Company being some tunnels which Mr. Kinzie described and marked on Exhibit 11 (eleven)—you have been through those workings?

A. Yes, I have.

(Testimony of F. W. Bradley.)

Q. First, you run a tunnel that Mr. Kinzie has marked on this exhibit, commencing at the letter "x" and extending probably in a southerly direction, and they you commence another one [1040] at "B" on this map and continued that down in a southerly direction—those are the two tunnels you have reference to that you have been in?

A. Those two tunnels; yes.

Q. Can you give the Court approximately the distance that those tunnels, about what depth they are, beneath the upper surface of the ground?

A. Yes, the elevation at the mouths of their tunnels is approximately 1,300 feet above sea level; the elevation of the mill is about 1,500 feet above sea level; the elevation of some of the higher cuts is about 1,700 feet above sea level.

Q. Look at this exhibit 11 and the map which was attached to the answer in 803-A marked "II." I will ask you if the proposed lower tunnel which runs through this Gastineau Tunnel site and the one that commences on the Colorado claim and is directed in the same direction as one part of this tunnel through the Gastineau Tunnel site and runs parallel to it—I ask you if those are the two proposed tunnels that you have had in contemplation in the past?

A. They are.

Q. This tunnel that is proposed that runs through the Gastineau Tunnel site—do you know how much work was ever done on that?

A. There never has been any work done on that.

Q. Never been any work at all?

(Testimony of F. W. Bradley.)

A. No, not on the tunnel as it will finally be.

Q. You did commence a tunnel there, though?

A. There was work done sufficient to patent the claims.

Q. Was that work done altogether for the patenting of the claims? [1041]

A. It was done for that purpose; yes.

Q. Mr. Kinzie has been here in control of the work of the Alaska-Juneau Company as superintendent and also superintendent of the allied interests of the Alaska-Treadwell for some years.

A. Yes, for some years.

Q. And your business has brought you in contact with each other on this enterprise, you have worked together considerably? A. It has.

Q. Now, you say that this tunnel as commenced on the Gastineau Channel site—the Gastineau tunnel site—was never put in the position that you intended ultimately to run the tunnel. A. It was not.

Q. Where did you expect to commence your tunnel ultimately? A. Approximately at sea level.

Q. This tunnel that was commenced was commenced up on the hillside, way up on the hillside, above sea level?

A. The assessment and patent work was.

Q. I mean the tunnel—the tunnel that was commenced up on this tunnel site was commenced up on the hillside above sea level?

A. It was, but it was not done by Mr. Kinzie—it was done by Joseph McDonald.

Q. And done while Joseph McDonald was superin-

(Testimony of F. W. Bradley.)

tendent of the Alaska-Juneau Company and also superintendent of the allied interests?

A. Yes, sir.

Q. Mr. Kinzie was superintendent under you?

A. He was.

Q. About what altitude above sea level was this tunnel commenced? [1042]

A. I have never seen that tunnel.

Q. You don't know the depth of it as it runs into the hillside? A. No, I have never been there.

Q. You don't know the size of it? A. No.

Q. This tunnel you proposed to run on this Gastineau Tunnel site was to start in at sea level and were you to run it on a level all the way up to the body of your property or were you to have it on a slight incline?

A. It would be on an incline, as mining tunnels are usually run.

Q. So you could run the property on the gravity system to some extent? A. Yes, sir.

Q. Did you ever calculate at what depth you expected to strike the property of the Alaska-Juneau Company up Silver Bow Basin with this tunnel?

A. Yes, sir.

Q. At what depth approximately would your tunnel have struck that property—just approximately, if you know?

A. It would be 1100 feet deeper than the mill above.

Q. You mean the mill now on the Alaska-Juneau property? A. Yes, sir.

(Testimony of F. W. Bradley.)

Q. Is your mill at a lower point considerably than the surface ground of your group of claims?

A. Yes, I said it was 200 feet below some of the upper cuts.

Q. It is 200 feet lower than a good deal of the surface ground of the property?

A. Yes, very much more than that.

Q. What is the altitude of the point on the Colorado lode claim at which you have commenced a tunnel? Altitude above sea level, I mean.

A. It is said to be 420 feet above sea level. [1043]

Q. At what depth, if you continue this tunnel from the Colorado claim as commenced, will that tap your upper basin property? When I say your property, I refer to the Alaska-Juneau Company?

A. That would be 1050 feet below the mill. I will have to correct my testimony as to the Gastineau sea level tunnel—that would be about 1400 feet below the mill instead of 1100 feet.

Q. You wish to correct it to that extent?

A. Yes.

Q. What incline did you contemplate running that Gastineau sea level tunnel at?

A. About one-half of one per cent.

Q. And what is the approximate distance from the Gastineau tunnel, from the sea up to your mill, on the Alaska-Juneau property?

A. I don't know what it would be to the mill, but where it would cut the vein it would be about 9,000 feet.

Q. Where do you anticipate or contemplate it

(Testimony of F. W. Bradley.)

would cut that vein—did you say vein or formation?

A. Vein.

Q. Where on your property did you expect that sea level tunnel to tap the vein?

A. About the northern extremity of the property.

Q. The northerly part of your property would be the entire upper end of the property, would it not?

A. Yes, it would be.

Q. I will ask you if these workings that have been placed upon your property up there in the way of the tunnels I referred to a while ago that Mr. Kinzie had described, if they could not be used in conjunction with either your sea level tunnel [1044] or your tunnel from the Colorado lode claim in the opening up, developing and mining of the ore from your property. A. They could be used; yes.

Q. In 1900, when you came here, was the thirty-stamp mill in operation upon this property?

A. What is called a thirty-stamp mill was in operation. I don't remember whether we added five stamps more to it or not. The stamp-mill was in operation.

Q. What about this five-stamp mill you testified concerning yesterday?

A. That was also in operation, on the property and in operation. I had it operated that summer on some waste dumps.

Q. On this exhibit 11 can you locate approximately where that five-stamp mill was or is?

A. It was at the north end of the zero, that 30 on exhibit 11—it was afterwards moved to the mouth

(Testimony of F. W. Bradley.)

of the tunnel at which the letter "B" stands.

Q. Has that mill ever been operated since you became president of this company? If so, what years?

A. Yes; 1900 it was in operation; I had it operated on the waste dumps and determined what the waste would yield and I had it moved to the mouth of the tunnel marked B in order to determine what the rock in that tunnel would mill.

Q. Was your thirty-stamp mill running at that time?

A. Yes, the mill called the thirty-stamp mill.

Q. You don't remember how many stamps you had in it at that time?

A. No; I was under the impression we added five stamps—that may be a mistake, though. [1045]

Q. Any other year you ran the five-stamp mill?

A. I don't remember whether that was run more than one season or not—it was run the season of 1900 and then shut down for a while. When those two lower tunnels were run it was moved down the hill to crush the rock from those tunnels, to determine the value of that rock.

Q. How many years since 1900 do you remember that mill having been operated—the five-stamp mill?

A. I think it was one or two seasons, that was later on, though—not immediately following the year 1900.

Q. Do you remember what years after 1900 this mill was run?

A. No, but these reports you called for will show.

Q. Are you certain when you did put in the full

(Testimony of F. W. Bradley.)

thirty stamps in your thirty-stamp mill—what year?

A. They may have been there all the time—I rather think now they were.

Q. Then, as I understand, you never did run this property as a commercial proposition?

A. No; there has been no profit made out of it during my time.

Q. Were you running it just as a sampling proposition all the time?

A. We were running it in order to determine its value, because with thirty stamps on that grade of ore and with a working season of less than five months per year, it was not a commercial proposition at all.

Q. You say now, without examining the reports, that you never did run it at a profit?

A. Some years it has run at a profit and some years it has run at a loss, but the profit, whatever profit there may have been, has been used to wipe out any loss and has also been used in the further development of the property. [1046]

Q. During these years you have been putting some of the money you obtained from the running and operation of the plant into its further development?

A. Yes, that is the explanation why the development of the property has been so slow, for the reason that we have had no money outside what that thirty-stamp mill would earn for us during less than five months per year.

Q. How much money outside of the profits from the running of your mill up there do you estimate you have put into the opening up and development

(Testimony of F. W. Bradley.)

of this property since you have been president of the company?

A. Well, there has been no money put in outside of what the property itself has earned.

Q. What do you estimate you have put into this property since 1900 from the profits of the property itself?

A. Well, practically the only outside investment has been the purchase of the Aurora claim and the locating and patenting of outside ground; the balance of our expenditures practically were operating costs. We fixed up the mill and have added crushers to it and have also done this other development work. If the development work properly could be called an operating cost, I should say that the total expenditures there have been fifty to sixty thousand dollars in the way of developing and proving the property.

Q. Does that include the purchase price of this property you speak of that you have bought?

A. Yes,—it may be more or less than what I have said, probably more.

Q. Now, besides these tunnels on the upper part of this property that have been run, described by Mr. Kinzie, what other work, generally, has been done upon this property to your [1047] knowledge, looking towards the opening up and development of it or for any purpose?

A. There is an upper tunnel that has been continued and run ahead; there has been one or two raises put up from one of the lower tunnels; there has been a great deal of work done over the surface

(Testimony of F. W. Bradley.)

ground in order to block out and prove the average value of the tonnage.

Q. Approximately, do you know the length and size of the tunnels that are on the property?

A. No, I haven't them in my head.

Q. You couldn't give the approximate length of them—the size of the tunnel?

A. No, I know what has been blocked out, though.

Q. Did you say you ran an open cut, too—did some crosscutting.

A. Yes, there has been a great deal of work of that kind done on the surface.

Q. You couldn't give an estimate of the length of your crosscuts or open cuts or anything of that kind?

A. No; about all I have in mind is a summary of it, of what the work has accomplished.

Q. Then, there has been a good deal of other kinds of work besides this, the open cuts and the tunnels?

A. Yes.

Q. What did that work consist of principally and briefly?

A. Milling tests and sampling tests—that has all been done.

Q. You were making milling tests from different parts of the property other than in these open cuts and tunnels you have described?

A. Yes, and milling tests of the different characters of rock.

Q. You came up here in 1910 about what time?
[1048]

A. About the 18th of July.

(Testimony of F. W. Bradley.)

Q. You got here a little ahead of the Bent party?

A. I must have—they arrived after I was here.

Q. You met Mr. O'Boyle and Mr. Bent and those parties while they were here?

A. No, I did not.

Q. Were they over at the mill, the Treadwell?

A. I was told so; yes.

Q. Were they there while you were there or after you had gone? A. I was there.

Q. You said some time in 1909 you had some instructions given Mr. Kinzie to locate the necessary quartz claims and the Colorado claim down to the sea level in order to secure a right of way through there for the opening up and developing of this property on the Gold Creek plan?

A. I discussed with Mr. Kinzie and Mr. Shackelford the matter of filing a located survey line for a railroad there to hold the right of way for a tramway, and the result of that discussion was, it was decided to be the better plan to locate a string of quartz locations to cover whatever ground might be vacant.

Q. You know when you went up there to locate those quartz claims in 1910 you not only covered vacant ground, but you covered all the other ground that was necessary to be covered to complete this scheme, from the Colorado lode claim clear down to the beach, didn't you?

A. That would follow, as a matter of course; yes.

Q. Were you here in the summer of 1910 when Datson and Summers and Mulligan and Lindsey

(Testimony of F. W. Bradley.)

made their locations?

A. I don't know the dates they made their locations. I left on the second of August.

Q. Did you know whether or not any of those locations had been [1049] made before you left here? A. No, I do not.

Q. You and Mr. Kinzie consulted together about it?

A. I talked to Mr. Kinzie about it; yes.

Q. And you and he took a geological map or a topographical map of some kind and looked over it and determined just where Mulligan should go up on Gold Creek to locate the water? A. No.

Q. How much did you and Kinzie discuss that matter together in 1910 when you were here?

A. There was no discussion—I told Mr. Kinzie what I wanted.

Q. What did you tell him you wanted?

A. I wanted the water located, but I wanted the ground protected and covered.

Q. Some of it had already been protected by prior locations? A. Not that I know of; no.

Q. You didn't make any inquiry about that?

A. I asked that inquiry be made, yes; I asked that the ground be all looked over carefully.

Q. It was not looked over carefully, was it, because some of the locations were filed right over other mining property that had been located for several years?

A. That is permissible if your discovery is on vacant ground.

(Testimony of F. W. Bradley.)

Q. Did you make your discoveries on those claims on vacant ground?

A. I didn't make them; I didn't do the work.

Q. You don't know anything about the discoveries? A. I have not seen them.

Q. Have you stated everything you said to Mr. Kinzie about making these locations in 1910?

A. I have. [1050]

Q. You directed him to go upon Gold Creek and make a location of water at what point?

A. At a point that would fit in with our operations.

Q. You didn't care where he located that water, whether it was on a patented claim or unpatented claim? A. Yes, I did.

Q. What particular claim did you instruct Kinzie to go up there and make your water location on?

A. I didn't instruct him as to what claim to make it on.

Q. What claims do you have in your mind that your company had on Gold Creek at that time?

A. The Oregon claim, the old Oregon claim under the Corbus location.

Q. You didn't know at that time that there had not been a lick of work done on the Corbus claim since 1905, did you?

A. I didn't know it until afterwards.

Q. Did you know it before you left here in the summer of 1910?

A. I knew it before I left here; yes.

Q. Did you know that Datson had gone up there

(Testimony of F. W. Bradley.)

and had staked virtually over the same old Oregon claim and made a location of it?

A. No, I didn't know that.

Q. That was Mr. Kinzie's work?

A. That was Mr. Kinzie's method of covering the ground.

Q. Do you know whether any other of those various locations from the Colorado claim down around what is marked on this exhibit 11 in pink, clear on down to the Gastineau Channel which is your proposed system of opening up on the Gold Creek system, were any of those claims located before you left here, to your knowledge?

A. They had been located prior to my arrival here last summer. [1051]

Q. How many of them, do you know?

A. I think all of them.

Q. Then, you were told about the location of them by Mr. Kennedy when you got here that year?

A. That was part of our plan of the summer before—1909.

Q. You stated a while ago that you directed Mr. Kinzie while you were here in August to go up there and make the necessary locations to protect your right of way on this Gold Creek system—did you not state that a few minutes ago?

A. I stated in 1909 I directed him to cover this right of way. I said that in 1910 I told him to locate the water and make necessary locations to protect it. It was in 1909 that I told him to locate the right of way.

(Testimony of F. W. Bradley.)

Q. You state, now, that you did not tell Mr. Kinzie in 1910 to go up there and make the necessary locations to protect the right of way of this Gold Creek system?

A. I repeat, as I said before—in 1909 I told him to make locations to protect the right of way for the railroad and tramway, but in 1910 I told him to locate the water and to cover the ground to protect it.

Q. Cover the ground to protect the water?

A. Yes, sir.

Q. Did he go with you when you were here in 1910 and tell you anything about the Datson locations of claims and Summers locations and Tompkins locations and Lindseys locations along the right of way that you proposed to bring the water out of Gold Creek from?

A. No; I left too suddenly—I left on the second of August. I was telegraphed for and had to leave.

Q. I though you said you arrived here about the second of August.

A. No, I arrived on the 18th of July. [1052]

Q. Now, you have stated everything you talked to Mr. Kinzie about in 1910 concerning this Gold Creek right of way? A. Yes, sir.

Q. If it turns out from the record in this case that a portion of these locations which I have just mentioned were made between the 18th day of July and the second of August, then they were made while you were here, were they not?

A. If that is so, yes—I had ordered them made,

(Testimony of F. W. Bradley.)

though, when I was here in the summer of 1909.

Q. But you didn't know anything more about those locations than you have testified about them?

A. That is all—to cover the right of way for the railroad.

Q. It is marked on this exhibit 11 proposed flume and tram—that is what you mean, is it?

A. Yes, sir.

Q. Did you know anything about any locations that were made down about the words "Proposed 200-stamp mill" that were made in the summer of 1910, down along the beach?

A. Yes, I know there were old locations there joining our Utah claim.

Q. Do you know that the claims located there in behalf of your company were located over the claim of Reck and Shattuck, for which application for patent had been made some years ago?

A. I knew there would be conflicts, yes—we would only get what was vacant.

Q. Do you know anything about Datson locating later in the fall what is called the Oregon lode claim up on Gold Creek? A. I know about it now; yes.

Q. You didn't know anything about that location until you arrived here on that trip?

A. No; I have heard about it since, of course.

[1053]

Q. Do you know whether or not that location was made after you arrived here?

A. I would only know from the record when it was made.

(Testimony of F. W. Bradley.)

Q. Now, as to the point of diversion of the water on Gold Creek, you didn't consult with Mr. Kinzie about that at all, did you?

A. No, I told him to locate it.

Q. You have been up Gold Creek since you came here this trip? A. No, I have not.

Q. You know about where your dam is put in up there? A. Yes, I know about.

Q. I will ask you what is the altitude of that point above Gastineau Channel or the sea level.

A. It is some distance—about 420 feet—I don't know just what the grade of the flume is.

Q. Do you know your Idaho claim up there?

A. Yes.

Q. What is the approximate altitude of that above sea level?

A. Say all the way from 300 to 600 or 500.

Q. That is lower down the creek than the Colorado? A. Yes.

Q. As to the proposed route, then, and the exact place of laying out the flume and tram from this tunnel in the Colorado claim down to the seashore, I believe you said you have had nothing to do with that? A. Except to order the locations made.

Q. You said something about this tunnel that has been run in the hillside on the Colorado—is that the tunnel that you ultimately expect to run to tap the body of your property up above on the hill?

A. When that tunnel cuts the fault that traverses the country there we expect to follow that fault on into the Juneau property; yes. [1054]

(Testimony of F. W. Bradley.)

Q. How far have you gone with that tunnel?

A. The tunnel is being driven in now; it is in about 200 feet and has about 400 feet more to go to get under Snowslide Gulch; in the course of construction of that tunnel I expect the fault will be cut.

Q. You start in on the Colorado claim—how far do you say you have run the tunnel?

A. About 200 feet.

Q. You have got to the point in that tunnel where you expect to make a turn off up the creek?

A. No; the fault has not been found yet.

Q. Have you been in the tunnel since you went up there? A. No, I have not seen the tunnel.

Q. Don't you know it is a fact that you have already made a turn in that tunnel, to run off this tunnel for your flume-line?

A. Why, the tunnel is being run now for a flume and it has accomplished two purposes—it will protect the flume from the snowslides and will also determine the point where the fault is and on that fault we will drive the main tunnel for the mine.

Q. Is not this the fact, that that tunnel stands in this condition to-day—you have run in a certain length, I don't know how far, and you have already made a branch off from your main tunnel and started the tunnel for your flume and that you are steadily driving ahead on that point your main tunnel?

A. I don't know—there might be several tunnels around there; all I know the company is driving a tunnel and it has accomplished two purposes.

Q. You have driven that tunnel in already a cer-

(Testimony of F. W. Bradley.)

tain length and then you have branched off with the tunnel that you [1055] propose to put your water flume through and have driven on your main tunnel past that point where you have branched off—is not that the fact?

A. I don't know what the physical condition up there is, I haven't seen it—there may be a number of old tunnels around there.

Q. I will ask you if your company, under the supervision of Mr. Kinzie, has not driven that tunnel in a certain length and then branched off in the manner I have stated to put in that tunnel for the water-flume and have then driven your main tunnel on 60 or 70 feet beyond that point?

A. If that is the case I don't know it—I have not been up there. I have not seen it.

Q. If Mr. Kinzie testified to that, you would not doubt it?

A. I would believe it, yes—if I saw it I would believe it, too.

Q. If that is true, he has already found the fault you are talking about and branched off in it?

A. No, he has not found it yet.

Q. Didn't you say you expected to branch off at that fault?

A. Yes, that is the intention, the correct intention.

Q. Then, if Mr. Kinzie has branched off already, he has either reached the fault or has branched off at a different point than you expected to branch off?

A. That would be the case; yes.

Q. Now, you testified about raising money. Have

(Testimony of F. W. Bradley.)

you already issued some treasury stock of this company, did you say?

A. Yes, we have provided some treasury stock.

Q. Issued it?

A. It is provided—it is not issued.

Q. You mean it is provided by certain resolutions, etc., of the board of directors of the company?

[1056] A. Yes.

Q. You haven't any of those books here?

A. No, I have not.

Q. Have you sold any of that stock?

A. No, it is contracted for, though.

Q. It is contracted for with the D. O. Mills people?

A. No, myself.

Q. With yourself? A. Yes, sir.

Q. You expect to buy it and take it up?

A. Yes, sir.

Q. You have not done so yet? A. No.

Q. And then, when you take up that treasury stock, that will give you a controlling interest in the company? A. That is the contract; yes, sir.

Q. And that is the object in taking it up, to get a controlling interest? A. It is, yes.

Q. When did you pass that resolution?

A. In December, last year—1910.

Q. Did you have a stockholders' meeting then?

A. Yes, it has been ratified in writing by all the stockholders.

Q. That is the way the matter stands at present?

A. Yes.

(Testimony of F. W. Bradley.)

Q. You were negotiating with the D. O. Mills people to take this stock, were you not? A. No.

Q. You didn't have any dealings with them at all about it?

A. I have. Mr. Ogden Mills has a one-third interest in the contract with me.

Q. They have refused to put up any money on it, have they not? A. No.

Q. When did they agree to put up any money on it? A. When I asked them to.

Q. When was that?

A. That was some time last summer. [1057]

Q. Have you anything in writing with those people to bind them, as a contract? A. I have.

Q. Have you got that here?

A. I may have a copy here.

Q. And they have contracted to take so many shares of that treasury stock with you?

A. Mr. Ogden Mills has contracted to take a third of my agreement with the Alaska-Juneau Company.

Q. When did you say you made that contract with the Mills people?

A. That has been made since my contract with the Alaska-Juneau Company, but it was arranged for before.

Q. Do you know the date of it?

A. I think it is February of this year—my negotiations with the Alaska-Juneau Company began before my arrival here last summer.

Q. When you came up here you didn't know anything about the Bent people coming?

(Testimony of F. W. Bradley.)

A. No, I did not—knew nothing whatever about it.

Q. You didn't know anything about the Ebner deal at all? A. No, nothing at all.

Q. Didn't know anything about—that Behrends and all of the stockholders of that company had entered into a contract to sell their stock?

A. I know it by rumor, after I had arrived here.

Q. You are pretty active and have been pretty active in the mining world for the last ten or fifteen years? A. In a small way.

Q. You have been in quite a large way? [1058]

A. No, just my own affairs; that is all.

Q. You have been consulting engineer for a whole lot of big institutions and were interested in the Tacoma smelter, were you not? A. No.

Q. And have cut quite a figure in the mining world for the last ten or fifteen years?

A. In a modest way, yes.

Q. Now, in these positions that you have been in it naturally behooves you to become somewhat acquainted with the transactions going on in the mining world and especially so far as the United States is concerned, does it not?

A. I hear about some of them; yes.

Q. And you have used a great deal of pains and care to hear about them, so as to keep yourself posted about what is going on?

A. I read the papers; yes.

Q. And otherwise you take pains to keep yourself posted? A. What people tell me about them; yes.

Q. Mr. Kinzie keeps you pretty well advised of

(Testimony of F. W. Bradley.)

what is going on about your property up here, does it not?

A. He makes his regular reports; yes.

Q. Keeps you pretty well advised of what is going on in the mining community up here with respect to all the mining undertakings—the Perseverance, Ebner, Sheep Creek and all the rest of the properties? A. No.

Q. If there is any new move contemplated being made which might affect your rights up here he keeps you pretty thoroughly informed of that—does he not? A. I hear about it; yes.

Q. You don't know anything about the newspapers having announced quite a little bit ahead of the arrival of the Bent [1059] party here that they were coming up to undertake some pretty big things up on Gold Creek—did you get any news of that in the newspapers? A. I may have seen that.

Q. You take both newspapers from Juneau?

A. Yes. I never read them, though; they are clipped for me.

Q. They are clipped in your office? A. Yes.

Q. And anything concerning your interest or anything of that kind up here is generally clipped for you?

A. Yes; the boy don't always get the right clippings.

(By Mr. SHACKLEFORD.)

Q. Can you tell approximately the amount of money that has been expended by the Alaska-Juneau

(Testimony of F. W. Bradley.)

Company during the years from 1906 on approximately?

A. The expenditures have been the gross output.

Q. Can you approximate that amount?

A. The gross output has been about 550,000 to \$600,000.

Q. That has all been put back into the mine except the expense of the patent work and the office expense and an expense of about \$18,000 for the Aurora lode claim; is that right?

A. It has been, yes.

Q. I will ask you if at the time you were discussing the location of water here you did not estimate with Mr. Kinzie the amount or the probable head of that water—did it not become important for you to figure somewhat the contour lines of that creek—you were to figure out the contour lines of that creek so as to locate the amount of head that you would have on the creek?

Objected to as leading and suggestive and not proper redirect examination. Objection overruled. Exception. [1060]

A. It is important to get as much head as possible.

Q. You might be mistaken as to whether or not you did not have a conversation with Mr. Kinzie in which you figured from the geological map the contour lines and probably point of diversion?

Same objection. Overruled. Plaintiff allowed an exception.

A. I probably discussed all phases of it with Mr. Kinzie and looked over a great many maps with him.

(Testimony of F. W. Bradley.)

Q. I call your attention to exhibit 12 and the markings on Gold Creek there and ask you if that refreshes your recollection one way or the other as to any discussion you had with Mr. Kinzie about it.

Same objection. Objection overruled. Plaintiff excepts.

A. I have looked over a similar map to this with Mr. Kinzie; yes.

Q. You don't recollect just when that examination took place with him?

A. No, we have discussed it off and on for the last ten years.

Q. Judge Winn has asked you about the first Oregon location, mentioning the assessment work. I will ask you if any of the superintendents or other officers of the company have been authorized to abandon that claim?

Judge WINN.—We object to the question as hearsay, not proper redirect examination and not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. No, no one was ever authorized to abandon the Oregon claim.

Q. I will ask you to state why that was not included in the group of claims that were patented, the first Oregon?

Same objection. Overruled. Plaintiff excepts.

A. The amount of money available being limited, and from my point of view all that was necessary to protect was the [1061] right of way for the tun-

(Testimony of F. W. Bradley.)

nel—I only had the ground patented that covered the right of way for the tunnel.

(By Judge WINN.)

Q. You didn't consider, then, the water right of any consequence back there in those days?

A. I did consider it of consequence but knew we couldn't locate it until we had a way of using it.

Q. You have been all these years with those contemplations in view and you didn't locate the water until 1910, did you?

A. Didn't locate the water until we were ready to use it; no.

Q. In 1910? A. In 1910.

Q. Is your memory in any wise defective or have you a pretty good memory?

A. I have a fair memory—I may get off on details.

Q. After Mr. Shackelford refreshed your memory you remembered about some of these matters that took place between you and Mr. Kinzie in 1910, did you?

A. My visit in 1910 was a very short one. What took place between us then as compared with what took place between us on my many other visits I could not differentiate. I know this matter has been discussed by us every time I have been here.

(By the COURT.)

Q. The amount of money you have arranged for with this company is sufficient to complete this work up to the operation of this 200-stamp mill that Mr. Kinzie has testified about on the beach?

A. It is a definite contract; we don't get the stock

(Testimony of F. W. Bradley.)

until we have run the tunnel and built the mill. It doesn't make [1062] any difference to the Alaska-Juneau Company how much the performance of that contract costs, Ogden Mills and myself don't get our stock in the Alaska-Juneau Company until we have completed this work and completed the mill, and the contract is that the mill is to be of a certain definite capacity and crush so many tons per year.

Q. And you are to connect the tunnel, then, with the mill? A. Yes, by the tramway.

Witness excused. [1063]

[Testimony of M. S. Hudson, for Defendant.]

M. S. HUDSON, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Douglas Island.

Q. How long have you lived in Southeastern Alaska? A. About eighteen years.

Q. Where did you come from to Alaska?

A. From the State of Washington.

Q. What business have you engaged in since you have been in Southeastern Alaska, principally?

A. Well, up to the last three years I have been following mining.

Q. In what capacities have you mined?

A. Well, I have prospected and worked in the mines at different things.

Q. Been superintendent of any mines?

A. Yes, sir; the Nevada Creek.

Q. How long were you superintendent of that com-

(Testimony of M. S. Hudson.)

pany? A. About six years.

Q. Where are the mines of the Nevada Creek Company located?

A. They are located on Douglas Island—about six miles from here.

Q. Have you worked any properties as the owner of the properties? A. Yes.

Q. Where are they located, what properties?

A. They are located on Nevada Creek—above the Nevada Creek properties.

Q. What is the name of them?

A. They are called the Republic group.

Q. They are situated about the same distance from Juneau that [1064] the Nevada Creek properties are? A. Yes.

Q. Do you know the custom of miners in the Harris mining district and surrounding mining districts, situated in the vicinity of Juneau, in Southeastern Alaska, governing the acquisition of water rights?

(Same general objection to this testimony. Objection overruled and exception allowed.)

A. I know in a general way; yes.

Q. You may state what the custom is—under the custom of miners as you know it in the locality last mentioned has the owner of the banks of a stream of running water, any right to the use of the water by reason of such ownership only, without appropriating it and applying it to a beneficial use?

Objected to as leading. Sustained.

Q. You may state what rights the owner of the land situated on the bank of a running stream has to the

(Testimony of M. S. Hudson.)

use of the water in the stream, without appropriating it to a beneficial use—what rights, if any, he has?

A. Under the custom here and any place I have worked, the first person who takes and uses the water, why he has a right to it.

Q. Has the owner of the land on the banks of the stream any right to the water unless he uses it?

Objected to as calling for a conclusion of law. Objection overruled. Plaintiff allowed an exception.

A. My understanding has always been he did not—it is my understanding he did not have a right to it unless he uses it.

Q. How may the right to the use of water be acquired in this district, in the district referred to surrounding Juneau? [1065]

A. By the rights of using it. My understanding of the rights and the way I have seen them is that a person has a right to it who come in and use it, make actual use of the water.

Q. Regardless of where the line is situated or where the water is used? A. Yes, sir.

Q. What right has an appropriator of water, one seeking to acquire a water right to convey it to a place where it is to be beneficially applied and build ditches; canals and flumes across the unpatented mining claims of others, under the customs of miners?

A. As a rule, where it is necessary to cross their claims, as we have done down there, we go across wherever it is the most convenient place to get the water, because a good many times you can't always take it out of the creek—you have to take it on the

(Testimony of M. S. Hudson.)

sidehill to get a fall to it—you usually take the most convenient point to get it out of the creek.

Q. It makes no difference whether one happens to be on another man's mining claim or not, in using it?

A. Never made any difference to us around there in using it.

Q. You may state what, if any, ditches you have built in connection with your operations at Nevada Creek over the claims of other parties, quartz claims?

A. Down there we have taken the water out of Nevada Creek and taken it across what is known as the Corbus claims—take it and use it first to clean off our ground and afterwards run the compressor with.

Q. The Corbus claims, what are they?

A. Quartz claims—they belong to J. P. Corbus and Mr. Mills, I understand. [1066]

Q. Did you ask Corbus' consent or permission to cross it? A. No.

Q. Did anybody interfere with your crossing the claims? A. No.

Q. When was that?

A. It seems to me it was about fourteen or fifteen years ago the water was first used and it was afterwards used on the compressor, about six years ago.

Q. When was the ditch built?

A. The ditch was built fourteen or fifteen years ago and afterwards rebuilt, about 6 years ago.

Q. What, if any, other ditches did you build across the claims of others?

(Testimony of M. S. Hudson.)

A. We dug a ditch across what was known as the Spread Eagle, for use on our Republic group of claims.

Q. Who was the owner of the Spread Eagle at the time?

A. A man named Cleever—he is a prospector, an old-time prospector.

Q. A man that is familiar with the miners' rules?

A. As far as I know he is—he has followed it all his life.

Q. What creek did you take the water out of there?

A. It was a branch of Nevada Creek.

Q. Where was your dam situated with reference to the Spread Eagle claim?

A. It was situated on the Spread Eagle.

Q. Where was the water taken from with reference to the Spread Eagle claim?

A. There was a dam built on that and carried along on the Spread Eagle claim, on to our claim.

Q. When was that ditch and dam built?

A. Six or seven years ago. [1067]

Q. Did you ask Mr. Cleever's consent to take the water over his claim and build the ditches and canals of which you have spoken?

A. I don't know whether we asked him or not, but he was there at the time—he was living up there at the time we took it out. I don't remember whether we asked him or not.

Q. He didn't interfere with you? A. No.

Q. You never got any right from him? A. No.

Q. What, if any, other ditches did you build?

(Testimony of M. S. Hudson.)

A. That was 11.

Q. That ground of Cleever was located at the time you took the water and built the ditch? A. Yes.

Q. Do you know about other ditches that have been built in this district during the last ten or fifteen years across the claims of others? A. No.

Cross-examination.

(By Judge WINN.)

Q. When was that water right located for the Alaska-Treasure group of claims below here on Douglas Island?

A. The one they use there was located—I don't know how long ago—fourteen or fifteen years ago.

Q. It brings the water out of what creek?

A. Out of Nevada Creek.

Q. Does Nevada Creek flow through this property?

A. No.

Q. It flows through the property that is being worked by the water that is taken out of the creek?

A. Yes.

Q. Your claims extend down to sea level?

A. Not at that time they didn't.

Q. The group of claims that belong to that group now, that has been aided, take it down to the sea level? A. Yes. [1068]

Q. How far back on Nevada Creek was that water location made?

A. I don't know—that would be about a mile from the shore.

Q. Who made the location?

A. I don't know who made the location.

(Testimony of M. S. Hudson.)

Q. And you don't remember how long ago it was located?

A. No; as near as I know, it was 14 or 15 years ago.

Q. In bringing that water down you crossed some claims belonging to J. P. Corbus, who used to be superintendent of the Alaska-Treadwell Company?

A. Yes, sir.

Q. How many claims did he own?

A. He owned two claims and two fractions.

Q. When did he locate his claims?

A. I don't know what time they were located—some time, I think, in 1884 or 5. He didn't locate them at that time but the claimant located them at that time.

Q. Do you know what location Corbus claimed to own the claims under, or did own them under?

A. My understanding was he got on to them by purchase from the original locators.

Q. Did you ever examine the record to find out?

A. No.

Q. That is just hearsay. A. Yes.

Q. That group of claims now belongs to the Alaska-Treasure—those two Corbus claims? A. Yes.

Q. Who put the water across Corbus claim in the first place?

A. The men working down there—I don't know, I believe Hartrader and Thompson were two of the men. I don't know how many more.

Q. Were they working under you? A. Yes.
[1069]

Q. You don't know what arrangements were made

(Testimony of M. S. Hudson.)

with Corbus of your own knowledge to go across there?

A. No; I helped do some of the work there, but I don't know what arrangements they have made.

Q. Hartrader and this other man owned the property then? A. They were interested in it; yes.

Q. You don't know when that water was first located for this group of claims? A. No, I do not.

Q. Do you know how old any of that group of claims are that make up the Alaska-Treasure?

A. I don't know the date, no; but it is somewhere in 1884 or 5.

Q. You don't know but what the water was located at that time? A. No, I do not.

Q. I will ask you how long you were superintendent of the Alaska-Treasure group of claims.

A. About six years.

Q. Had there been any mill erected on it when you quit? A. Yes, twenty stamps.

Q. Where is the Republic group?

A. That is further back, further up on the same creek.

Q. On Nevada Creek? A. Yes.

Q. Did you use any water out of Nevada Creek to do any work on the Republic group?

A. Yes; we used that up there to clean off the ground in several places and do such as that—that is the only thing we used it for.

Q. Were you interested in the Republic group?

A. Yes.

Q. Did you use this water from Nevada Creek at

(Testimony of M. S. Hudson.)

the same point of diversion to work the Republic group you did the Alaska-Treasure group?

A. No. [1070]

Q. You diverted it at another point further up?

A. It was about three-quarters of a mile further up the creek.

Q. Than the point of diversion for the other group? A. Yes.

Q. Do you know who located that water right that went with the Republic group?

A. It never was located that I know of.

Q. Just going on the creek and taking the water out? A. That was all.

Q. When was the water first taken out to work this Republic group?

A. That would be about eight years ago.

Q. Had it been taken out at that point before you took it out? A. No.

Q. Were you one of the original locators of the Republic group? A. Yes.

Q. Did Cleever locate in on any of that group with you?

A. No, he was located before we located there.

Q. Where did he locate with respect to the Republic group?

A. The Black Diamond group was located first and he located adjoining them and we located adjoining him.

Q. Did you take the water across his claim?

A. We took it out from his claim, off his claim.

Q. He never made any objection to it? A. No.

(Testimony of M. S. Hudson.)

Q. He hadn't been using the water himself to work his claim? A. No, he never used it.

Q. Where is Cleever?

A. He died here a few days ago—four or five days ago.

Q. Did he own that claim up to his death?

A. Yes.

Q. How many years did you use the water on the Republic group? [1071]

A. About three or four years, that is, in the summer-time. Beginning in 1904, either 3 or 4—I think.

Q. And used it up to about 1907?

A. About that time—I don't remember just the exact time.

Q. Do you know whether or not Cleever kept up his assessment work on his claim, up to his death?

A. He kept it up until last year,—I don't know about last year, but he has kept it up right along.

Q. He just owned one claim up there?

A. He owned two at that time.

Q. Did they border on the creek?

A. They crossed the creek—the creek runs through the centre of his claims.

Q. This matter of using that water from the creek on this Republic group, for what purpose did you use it?

A. Covering the bench and opening up to determine where the ledge ran and how wide it was.

Q. There never has been any mill erected on that property? A. No.

(Testimony of M. S. Hudson.)

Q. So you put the water to a contemplated use at that time? A. Yes, sir.

Q. You never located it or undertook to take it out of that creek for the purpose of running a mill on that property.

A. No, I don't think we located it at all.

Q. How far did you take it out of the creek to do this sluicing?

A. Sometimes we were on the hill for a quarter of a mile, probably a little more than that and then taking it out at different points along there.

Q. You know you didn't take it out of Nevada Creek to *use the* mill on the Alaska-Treasure Company's property until there [1072] was a contract with Corbus to buy that property?

A. Not for the mill; no.

Q. You first contracted with Corbus to buy his property—or do you know when that contract was made?

A. I believe that contract was made later.

Q. Who was it made by?

A. Arthur Pearse and some of those people—I don't know who made the contract.

Q. You know it was contracted sometime about the time you were putting in that mill and afterwards the deal was consummated to take it over the claims—the contract itself was after the mill was put up? A. Yes, sir.

Q. Did you see the contract?

A. I don't remember whether I did or not.

Q. You don't know when Arthur Pearse and these

(Testimony of M. S. Hudson.)

people first commenced to dicker with Corbus in San Francisco to get that property?

A. Arthur Pearse, you know, didn't have anything to do with the claims until after the mill was up.

Q. Do you know when Mr. Stone commenced to make the deal with them, with the Corbus people?

A. I don't know that he ever made a deal with them at all.

Q. Who did make the first deal with them?

A. That was made after the time Arthur L. Pearse had taken hold of it.

Q. Wasn't Arthur Pearse on the property before the death of Colonel Stone?

A. He was on the property but wasn't interested in it.

Q. How do you know he was not? [1073]

A. He was not interested, I know, then.

Q. You don't know what interest he had with old Colonel Stone?

A. No, I know he didn't have any interest in the company,—I don't know what interest he might have with Stone.

Q. Stone was largely interested in the company?

A. Yes.

Q. You don't know what arrangements were made between him and Stone as to the Stone interest?

A. No.

Q. Now, this is all the experience you have ever had with the use of water in Alaska? A. Yes.

Q. You didn't come here until what year?

(Testimony of M. S. Hudson.)

A. To Alaska?

Q. Yes.

A. Why, I think it was '93—I am not sure about the year.

Q. You know nothing about any local miners' rules and customs?

A. Only what I happened to come in contact with.

Witness excused. [1074]

**[Testimony of R. A. Kenzie, for Defendant
(Recalled).]**

R. A. KENZIE, recalled:

(By Mr. HELLENTHAL.)

Q. You are the general superintendent of the defendant company? A. I am.

Q. What other companies, what other mining corporations in Southeastern Alaska do you sustain a similar relation to?

A. The Alaska-Treadwell, the Alaska-United and the Alaska-Mexican.

Q. How many stamps has the Alaska-Treadwell Mining Company? A. 540.

Q. How many the Alaska-United? A. 240.

Q. How many the Alaska-Mexican? A. 120.

Q. What other mills are there in Southeastern Alaska?

A. There are three mills—Berner's Bay.

Q. How large is that mill?

A. The largest mill there is 40 stamps; and 10 stamps and a twenty-stamp mill.

Q. These mills in Berner's Bay belong to whom?

A. They belong to three different companies—one

(Testimony of R. A. Kenzie.)

is known as the Nowell Company and there are two others. I won't be positive as to the number of **stamps**—thirty or forty in one and ten in each of the others, I believe. Then, there are two mills on Jackson Creek, the Juliana Mill with ten stamps and the Indian-Alaska mill.

Q. Are any of those mills you have last referred to operating now? A. No.

Q. How long since they have been operating?

A. The Nowell mill ran ten stamps for experimental purposes but I don't know when they ran—it was ten or twelve years [1075] ago since it was run.

Q. How about the others?

A. The Juliana mill was running about six years ago. Then, coming down, I think, the next mill you come to is the Eagle River mill. I think that is 20 stamps. I have never been there; that is in operation, I think.

Q. What other mills are there in southeastern Alaska mines that are in operation?

A. There are some abandoned mills between here and there, some of the old Nowell mills. Coming down to the vicinity of Juneau there is the Perseverance mill.

Q. How many stamps?

A. One hundred stamps. The Alaska-Juneau has one 30 stamp and one five-stamp mill. Coming down further there is the Red Mill, one of the old Nowell mills; that is practically abandoned; then the Ebner mill and the five-stamp mill.

Q. The Ebner mill, is that operated now?

(Testimony of R. A. Kenzie.)

A. No; that has not been operated for the last three or four years. Then, there was a mill below here, not counting the mills on the Island and at Nevada Creek. There is a mill at Snedeshan.

Q. How large a mill at Nevada Creek?

A. I believe Hudson testified a 20-stamp (twenty-stamp) mill; and there was a stamp mill at Sumdum; and the one at Snedeshan.

Q. They have been abandoned?

A. Yes; there is a small mill on the Copper Mountain, either three or five stamps; they are operating a little high grade property there.

Q. You have named all the quartz-mills in South-eastern Alaska you know of? [1076]

A. No, there are a few others, one at Funder Bay and one at Sitka—all the principal mills.

Q. Is the one at Funder Bay in operation?

A. No, it has not been used in ten years.

Q. And the Sitka mill?

A. I don't know about that—there is one at Chicagoff—that is in operation.

Q. How large is that?

A. I think they enlarged that to a ten-stamp mill; it was a very small mill.

Q. How long have you been in Alaska, did you say? A. Ten years.

Q. During that time you have either been assistant superintendent or general superintendent of the various companies you have referred to—the Treadwell, the Alaska-United, the Alaska-Mexican and the Alaska-Juneau? A. Yes, I have.

(Testimony of R. A. Kenzie.)

Q. Do you know the custom of miners in the Harris mining district and surrounding mining districts and such mining districts as surround the town of Juneau in Southeastern Alaska governing the acquisition of water rights?

(Same general objection to this line of testimony. Overruled and exception allowed.)

A. I do.

Q. Are you familiar with the topography of the country comprising Southeastern Alaska?

A. In a general way; yes.

Q. Are you familiar with the climatic conditions in Southeastern Alaska? A. I am.

Q. And the conditions of the soil generally?
[1077] A. Yes, in a general way.

Q. What is the topography of the country as to being rough or otherwise?

A. It is very precipitous and rough along the coast line.

Q. Is there any soil suitable for agricultural purposes?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. I believe so in isolated spots. They don't comprise any very considerable percentage of the total area in Southeastern Alaska.

Q. Are the climatic conditions such that vegetables and fruit and grains will ripen in Southeastern Alaska?

(Testimony of R. A. Kenzie.)

A. Some vegetables will—most fruits and grains will not.

Q. What vegetables will ripen?

A. Cabbages, potatoes, turnips and things of that sort.

Q. Can't grains be raised in Southeastern Alaska?

A. I have never known of their being raised.

Q. Is the country suitable for stock-raising?

A. I should say not, on account of the moisture.

Q. Is there any industry carried on in Southeastern Alaska, any productive industry, other than mining?

Same objection. Objection overruled. Plaintiff excepts.

A. I should say mining is the principal industry—fishing.

Q. Outside of the salmon and halibut fishing?

A. There are some small ranches on the bars. I only know of 2—Tom Knutson's and William Lund's. They don't amount to much.

Q. Under the customs of miners in the localities referred to, Southeastern Alaska and the mining districts surrounding Juneau more especially, has the owner of lands situated on the banks of running streams any right to the use of water [1078] in those running streams by reason of such ownership, under the customs as you know them?

A. By appropriation; yes.

Q. I mean by reason of the ownership of the banks independent of the appropriation?

A. No, I should say not.

(Testimony of R. A. Kenzie.)

Q. How can a water right be acquired in South-eastern Alaska under the miners' customs as you know them?

A. By appropriation and use. The first step is usually to post a notice stating the number of inches or cubic feet of water or quantity of water to be diverted the point of diversion, usually in the vicinity of the notice posted and the notice goes on to state the method of conveying the water and the point of intended use.

Q. Does it say anything about the purpose the water is to be used for? A. Yes.

Q. Then, what is done with the notice?

A. Then the work of actually appropriating the water, that is, conveying it and putting it to a useful purpose must be started and continued with all due diligence. You can't take up a water right and let it stand and come back in two or three years and continue the work—the mere fact of abandoning it, I believe, works a forfeiture.

Q. What would work a forfeiture?

A. Not using due diligence in applying the water so diverted from the stream.

Q. What do you do with the notice, if anything, after posting it?

(Same general objection. Objection overruled and exception allowed plaintiff.)

A. The notice is recorded in the nearest recording office, which is here in Juneau. [1079]

Q. In about what length of time is that usually done under the custom?

(Testimony of R. A. Kenzie.)

A. As soon as possible—usually within ten days, I would say, from ten to twenty days.

Q. Under the local customs as you know them that obtain among miners in Southeastern Alaska and those operating mines, what rights, if any, has one seeking to appropriate water and acquire a water right by appropriation to build ditches, flumes, canals, aqueducts, dams and other appurtenances of those ditches over and across the mining claims of others, quartz or placer?

A. The custom is to extend the ditches over property belonging to others—the only restrictions I know of is the restriction of damages that you cannot interfere with a man's working or if you cause him any damage, you allow him for that damage so done in conducting the ditch or flume across his property.

Q. What is the custom among miners with reference to the relative rights of the ditch owner and the claim owner, if the claim is located first and the ditch located across the claim afterwards—what are the relative rights of the parties?

A. The owner of the ditch has a right to cross the claims.

Q. But if the mine is located first and the ditch constructed afterwards, who has to take care of the water, that is to say, if the mine owner desires to mine, what is the duty of the ditch owner?

A. The ditch owner has to take care of the property.

Q. And if the ditch is located across public domain

(Testimony of R. A. Kenzie.)

first and the mine located afterwards over the ditch, then what are the relative rights of the parties?
[1080]

A. The man locating the claim, as I understand it, has to take care of the ditch—he can't allow the work to interfere with the ditch or flume passing over his property.

Q. Does the construction of the flume or ditch across the Parish claim by the Alaska-Juneau Company from the point of diversion, so long as the ditch and flume remain on the Parish claim, in any wise injure or damage the Parish claim assuming that would be a valid location?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. I think it does not.

Q. It does not damage it? A. It does not.

Q. Would it in any wise interfere with the work and operation of the mine found upon the Parish claim, if the mine should happen to be found there?

Same objection. Objection overruled. Plaintiff excepts.

A. I think it would not.

Q. It would not interfere with the work?

A. No, sir, it would not.

Recess to 1:30.

Mr. SHACKLEFORD.—I desire to withdraw Mr. Kinzie for a moment and call Mr. Marks.

By the COURT.—Very well. [1081]

[Testimony of Antone Marks, for Defendant.]

ANTONE MARKS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. Where do you reside?

A. Douglas Island.

Q. How long have you lived in this part of Alaska?

A. Nearly thirty years. Came here in 1881, the first time.

Q. What have you been engaged in?

A. Mining most of the time—all the time.

Q. I will ask you if you are acquainted with the custom of miners in this Juneau mining district with reference to the appropriation of waters for mining purposes?

(This testimony is subject to the same general objection, which is overruled and exception allowed.)

A. Some, yes.

Q. State what the custom is with reference to making a water appropriation—how do you start the appropriation?

A. Well, the custom I have been used to, a man would have his ground cleaned for work and he has got to go to work to build his ditches.

Q. What about filing notice?

A. He has got to file a notice that he is going to cut a ditch, I suppose, and fetch water from most anywheres at all, wherever he can fetch it to the ground, to work with.

(Testimony of Antone Marks.)

A. Are you acquainted with the custom with reference to going on other claims where water is flowing through unpatented mining claims—where the water is flowing and not all used and taking it over and across other claims for the purpose of using it on your own claim?

A. I have done it myself. [1082]

Q. State to the Court what that custom is about going on other creek claims to get the water.

A. I can't explain it like I ought to. The first thing is to go to work and have a place to take the water to and fetch a ditch over to the ground and see it don't do any damage to any man's property.

Cross-examination.

(By Judge WINN.)

Q. You have talked to Mr. Hellenthal and Mr. Shackleford about what you were going to testify to before you came on the stand? A. No, sir.

Q. Did you talk to Mr. Kinzie or Mr. Bradley?

A. No, I don't know Mr. Bradley if I see him now—never spoke to him.

Q. You have not talked to anybody about this custom for three or four or five days at all?

A. No, I did not. I didn't know about it until last night. A man came in and told me to come over. I don't know who he is, either—if I saw him now I would know him.

Q. What are you doing in Douglas?

A. I am doing nothing now.

Q. Did you ever work for the Treadwell?

A. No, never did.

(Testimony of Antone Marks.)

Q. Where do you own any mines?

A. Nevada Creek.

Q. How many claims have you got up there?

A. I have one claim there.

Q. Who is interested with you—Mike Hudson?

A. Yes.

Q. Is that the Republic group? [1083]

A. No, that is the Alaska-Treasure group.

Q. Do you own any claims that belong to the Alaska Treasure Company? A. I do.

Q. Have you sold them to that company?

A. I did not.

Q. The Alaska-Treasure Company is a corporation that owns some claims over there?

A. I suppose they do but I didn't sell my interest.

Q. What do you mean—you own some claims with the Alaska-Treasure Company?

A. I own an interest in the mine.

Q. Is that the property you have?

A. Yes—I own an interest in the mine.

Q. You own stock in the corporation?

A. That is what I do—I own the claims in it.

Q. You never did deed them away to the company?

A. No, deeded nothing to anybody—I give them an option on it.

Q. They own an option of it? A. Yes.

Q. Where did you take water from to work your claims with?

A. We use it from the Corbus and Duncans and our own water.

Q. When did you use the water, how long ago?

(Testimony of Antone Marks.)

A. I guess about three years ago myself.

Q. Did you use it on the claims after you gave the Alaska-Treasure Company an option?

A. No, not since that.

Q. The water used on those claims is the same water that Mike Hudson testified about this morning?

A. I presume it is. I don't know, but I know I used Corbus water and used our own water for prospecting, cutting ditches. I worked for three months.

Q. What do you mean by using Corbus water?
[1084]

A. It was easy for him to fetch it over.

Q. The Corbus property went into the Alaska-Treasure Company property too?

A. Yes, I guess it did—I understood so.

Q. Whose claim did you go on to take the water off from, whose mining claim in the creek?

A. Edwards claim, they used to call it—Edwards & Filsofer.

Q. Where are they?

A. Right alongside of our claim—they are both dead.

Q. You used a dead man's water? A. Yes.

Q. That is the claim you went on? A. Yes.

Q. He was not there to raise any row with you?

A. No, he was not. Corbus was there and Duncan, they owned the property there when I was there.

Q. That is the Corbus property?

A. When I worked it; yes.

Q. Do I understand the Filsofer and Edwards

(Testimony of Antone Marks.)

property is the property that Corbus got?

A. Yes.

Q. That is the only water you have ever used in Alaska?

A. I used water up the Basin and different places.

Q. How long ago did you work up there in the Basin? A. Twenty-nine years ago.

Q. Did you placer mine up there? A. I did.

Q. Did you ever build any ditches up there?

A. I have—not a very big ditch, just enough to get water for the little ditch.

Q. Were you *here were* had up there in the Basin between the Placer owners and the owners of quartz claims? A. No, sir; I was inside.

Q. You have told the Court all you know about the water business? [1085]

A. I have told the Court all I know about the water business.

Q. You didn't build any mill on the property?

A. No.

Q. Did you put a sluice-box in or how did you take it out of the creek?

A. Put a sluice-box in.

Q. And took it out and used it on your property and let it run back into the creek?

A. That is all.

Q. How many years did you use it that way?

A. Two seasons.

Q. Corbus & Duncan didn't raise any kick about it at all? A. No.

(Testimony of Antone Marks.)

(By Mr. SHACKLEFORD.)

Q. What year was that when you were working on this claim and taking the water from the Corbus claim? A. It was five or six years ago.

Q. How old are you? A. About 70.

Q. You have not been engaged in mining operations for the last two or three years?

A. No, I have not.

(By Judge WINN.)

Q. It was six or seven years ago you used that water? A. Six years ago.

Q. Duncan was dead then too? A. Yes.

Q. And Corbus was down below?

A. I think Corbus was here at the time—I know that he quit but I don't know when.

Q. Corbus hasn't been in the country for several years? A. No, I have not seen him.

Q. Duncan was not objecting then either?

A. No, none of them.

Witness excused. [1086]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

Mr. KINZIE, recalled.

(By Mr. HELLENTHAL.)

Q. I will ask you to indicate the quartz properties that are actually in operation in Southeastern Alaska.

A. The Eagle River, the Perseverance, the Alaska-Juneau, the Alaska-Treadwell, the Alaska-Mexican, the Alaska-United,—that is all the mills I know of that are now operated.

(Testimony of R. A. Kinzie.)

Q. Are there any placer properties you know of that are in operation at the present time?

A. Yes, they are operating in the Basin what is known as the Nowell placer—that is operating now. I know of no others.

Q. I hand you exhibit 50. State what it is in a general way.

A. It is an outline map, showing the outline of various mining claims in the vicinity of Juneau on both sides of Gastineau Channel, also showing a number of the creeks and ditches as they exist.

Q. During the time that you have been general superintendent or assistant general superintendent of the Alaska-Mexican mine what, if anything, has that company done in the way of constructing ditches and acquiring water rights in the neighborhood of Juneau?

A. They have constructed one ditch, a ditch about half a mile long.

Q. From what creek is the water diverted by means of that ditch?

A. The water is taken out from a small draw just back of the—I think it is called O'Brien Creek. I don't remember the exact name. I think that is the draw, and continues by that point by the Mexican penstock and over to the ditch of the Alaska-United Co., the Ready Bullion mine.

Q. Is the intake of the ditch you have last referred to on the mining claim of any other than the Alaska-Mexican Company? [1087]

A. It is—on ground, I think Captain John John-

(Testimony of R. A. Kinzie.)

son at present claims it.

Q. Was that ground claimed and occupied at the time the ditch was being constructed? A. It was.

Q. Do you know the name of the claim?

A. No, I do not.

Q. Along whose ground, if anybody's, was that ditch constructed along its course?

A. That was the only ground that ditch crossed.

Q. For how long a distance was it in this ground of Johnson?

A. There is a number of claims in there—I should say on ground other than the public domain it is on about 800 feet—it runs diagonally through the corners.

Q. And the water itself is taken from that claim?

A. It is; yes.

Q. When was that ditch constructed?

A. That ditch was constructed about four years ago.

Q. Did you obtain the permission of the owners of the mining ground there to take the water off of that ground or to cross their claims with ditches and flumes? A. I did not.

Q. Was there any permission ever obtained?

A. It was not.

Q. Were you ever interfered with in the construction of that ditch, in the acquisition of your water right or the appropriation of your water?

A. No, we were not.

Q. That was four years ago?

A. About four years.

(Testimony of R. A. Kinzie.)

Q. What, if anything, has the Alaska-Treadwell done while you have been connected with it, in the matter of constructing ditches and flumes and acquiring water rights? [1088]

A. The Alaska-Treadwell has extended part of their main system and have also built a new ditch from a point on Paris Creek above the Bear's Nest mine.

Q. Does that ditch cross the mining ground of any others than the Alaska-Treadwell Company?

A. It does; it crosses part of the Bear's Nest ground and part of the Jersey City—I think they call it Jersey City.

Q. On whose ground is the water taken out?

A. I think the water is taken out there on the public domain.

Q. Are those last two ditches you have delineated on this map, No. 50?

A. No, they are not; there are a number of ditches not on here.

Q. Put on there the Alaska-Mexican ditch—mark it “Alaska-Mexican ditch.”

A. This is the new ditch from Paris Creek I have just mentioned.

Q. Mark the Treadwell ditch and put on the date of construction.

A. That was built last year—1910; the Mexican ditch is about here.

Q. Does the property of the Bear's Nest show on that plat? A. Yes, sir; it is marked Bear's Nest.

(Testimony of R. A. Kinzie.)

Q. Does the property of Captain Johnson show on there?

A. No, it does not—in a general way, it would be about there.

Q. Did you mark that Johnson property?

A. Yes.

Q. Have you got the ditch on there?

A. Yes, the ditch shows on there.

(Witness marks the ditch—Mexican ditch with date of construction.)

Q. Does it show the draw out of which the water is taken?

A. Yes, it is an extension of an old ditch—the draw comes in through here some place—right across the property. [1089]

Q. What other ditches, if any, have the Alaska-Treadwell Company built during the time it has been under your superintendency?

A. It simply has been extending ditches from the west end of their main ditch system.

Q. Any of those on mining claims of others?

A. No.

Q. Does the Treadwell own this water power at Sheep Creek? A. Yes, sir.

Q. What, if any, ditches did you build in that connection?

A. We built the ditch and flume line from our intake on Sheep Creek to our penstock.

Q. Does that cross anybody else's property except the Treadwell?

(Testimony of R. A. Kinzie.)

A. It starts on property belonging to a man named Dolan.

Q. And runs how far over it?

A. I should say 50 to 100 feet, maybe a little more—the balance of the ground there we own ourselves.

Q. Has the Alaska-United built any ditch under your supervision?

A. They have. They have built a ditch from Bullion Creek to their penstock, just above the Ready Bullion mill.

Q. Is that ditch indicated on exhibit 50?

A. No, it is not.

Q. Please put it on.

(Witness does so.)

A. I have marked it Ready Bullion ditch.

Q. What date was that ditch built?

A. That was built four or five years ago. I will put the date of construction on approximately.

Q. On whose property does that ditch start?

A. That ditch starts on the property of the Yakima Gold Mining Company.

Q. Is that property owned by the Alaska-United Company? [1090] A. It is not.

Q. What creek does it take the water at?

A. Bullion Creek—on the property of the Yakima people. It crosses over the peat flats to a point just above the road to the Bullion mill.

Q. Does it cross any other mining claims, other than the Yakima?

A. There are some claims in there, but I don't know whom they belong to.

(Testimony of R. A. Kinzie.)

Q. Are they quartz or placer?

A. They are located as quartz claims.

Q. Were they located and subsisting claims at the time the ditch was constructed?

A. I noticed the stakes at the time we built the ditch.

Q. Did you ask permission of anybody in order to take the water over the Yakima property?

A. I did not.

Q. Did anybody oppose you in doing so?

A. Never have; no, sir.

Q. Did you ask anybody's consent to cross over intervening mining claims with that ditch?

A. No.

Q. Did anybody oppose you in doing so?

A. They did not.

Q. Did you ask the consent of the Bear's Nest people in crossing their ground?

A. We did not.

Q. Did anybody oppose you crossing that ground?

A. No.

Q. What, if any, other ditches were acquired by any companies with which you have been connected in Alaska during that supervision?

A. Those are practically all the ditches that have been built by any company I have had anything to do with.

Q. Do you know anything about the ditch at Berner's Bay? A. I do. [1091]

Q. Does that cross mining claims of others than the Berner's Bay Company? A. It does.

(Testimony of R. A. Kinzie.)

Q. Do you know the names of the parties whose ground it is crossing?

A. I am not positive—the intake of the ditch, I believe, belongs to the Portland & Alaska. I won't be positive. It is the same people that own the mill and cabin on the shores of Lynn Canal; the intake of the ditch is on property of some one other than the Berner's Bay Company.

Q. From what creek do they take the water?

A. I think that creek is called Opal Creek—I won't be positive of that name.

Q. Do you know anything about the Jualin Company's ditch? A. I do.

Q. Does that cross the mining ground of others than the Jualin Company?

A. It does; it starts on property other than that owned by the Jualin Company.

Q. Do you know the names of the parties owning the property?

A. I think it is called the Indian-Alaska—something of that sort.

Q. That is where the water is taken out of the creek? Their dam is on property other than the Jualin Company property? A. Yes, sir.

Q. How far does it extend across property other than the Jualin Company's property?

A. Not for a very great distance. I couldn't say positively how far it is—I know it is not very far.

Q. Do you know anything about the Eagle River ditches?

A. Not personally, no—not of my own knowledge.

(Testimony of R. A. Kinzie.)

Q. Anything about the Perseverance ditch?

A. Not personally. I have never gone over the ground personally. [1092]

Q. Do you know anything about the Alaska-Juneau ditches? A. Yes, sir.

Q. Are they on property other than that of the Alaska-Juneau?

A. Their intake is on property other than ours.

Q. The intake is on whose property?

A. The property belongs to the Oxford Mining Company—that is some of the old International Trust Company property, formerly owned by the Nowells.

Q. How far does it extend across that property?

A. Only a short distance.

Q. Have you any record in your office or any consent or license to go upon that ground to take the water off? A. I have never seen it.

Q. Does that ditch show on this map?

A. Yes, both the ditches are here.

Q. Both the ditches are marked Alaska-Juneau ditch?

A. Yes, sir; they both start on the same property and both cross the property of the Oxford Mining Company. We take the water out on the property of the Oxford Mining Company.

Exhibit 50 is admitted in evidence.

Q. The main Treadwell ditch—is that delineated on this map?

A. Only a short part of it here—the ditch extends all the way up Douglas Island and around the north-west end.

(Testimony of R. A. Kinzie.)

Q. How long is that ditch?

A. The ditch is approximately 20 miles long.

Q. Does it cross the mining claims of people other than the Treadwell? A. Yes, sir.

Q. How many—do you know?

A. No, can't say positively. I know there is Mr. Shattuck owns some claims along that dotted line and Mr. Tracy and then some men working on the ditch had some claims toward [1093] the end of the island. I don't know how many.

Q. Does it cross the Bear's Nest property?

A. Yes, sir.

Q. That is an old mining property?

A. Yes, sir.

Q. What other claims does it cross—the main ditch?

A. I think no other claims except our own.

Q. What is the character of the properties that you have referred to, including the Alaska-Mexican, United, Treadwell, Juneau and Perseverance properties and all those other properties—whether it is low or high grade ore?

A. I think they would be classed as low-grade ore.

Q. Can they be worked to advantage unless they are operated by means of water-power?

A. I don't think so.

Q. Can these properties acquire water-power? I speak especially of the Alaska-Treadwell and Mexican, from sources other than those they are now acquiring them on Douglas Island. A. No, sir.

Q. And without the water rights connected with

(Testimony of R. A. Kinzie.)

the ditches, as I understand you, the properties on Douglas Island could not be worked?

A. I doubt very much whether they could be worked.

Cross-examination.

(By Judge WINN.)

Q. You say the main Treadwell ditch was here when you came here? A. Long before I came.

Q. The part that has been constructed since you had anything to do with the property over there has been mainly an extension of it still further on up the island to gather up more water? [1094]

A. Part of the work has been done there and part has been done directly back of the works in an area there, say, three miles long and half a mile wide.

Q. Just back of which one of your mills over there?

A. That would cover all the mills, that area.

Q. The work you did back of your workings over there was that to get under the hillside and pick up more water? A. It picked up more water.

Q. This Treadwell ditch, as I understand it, depends largely for water upon the water that comes from the hillside from the melting of snow and small streams, does it not?

A. It does, supplemented by a dam.

Q. Back of your works there, what creek, if any, do you tap?

A. We tap two creeks,—one is known as Paris or Mill Creek and Bullion Creek.

Q. That work has been extended up to those creeks

(Testimony of R. A. Kinzie.)

since you came here? A. Yes, sir.

Q. That is where Johnson's property is?

A. No; Johnson's property, I should say, is about halfway between Paris Creek and Bullion Creek—it is one of the Cordwood Jim properties.

Q. It is not the Cordwood Jim property down near the beach?

A. Oh, no. That claim, I should say, would be back of the beach 2,000 feet or 2,500 feet—a little more than that,—it would be close to 3,000 feet.

Q. That is not the property that is in contest between your company and Johnson?

A. No, that is on the beach.

Q. Do you know when Mr. Johnson came to that property?

A. No, I do not. I don't know whether he ever owned it or not—I am simply told he did. [1095]

Q. Cordwood Jim is dead? A. Yes, sir.

Q. Do you know whether the assessment work has been kept up on the property or not?

A. It has not during the last few years.

Q. It is abandoned property?

A. It is now; yes.

Q. What other claims on those works back of your property do any of your ditches cross?

A. They cross the Yakima; they cross these unpatented claims or located claims—the stakes are in the ground yet. I don't know who own them.

Q. What is the Yakima property?

A. It is now patented—I don't know who owns it.

Q. All you know about there being other claims

(Testimony of R. A. Kinzie.)

there, you saw stakes in the ground?

A. I saw the stakes on the ground and was told. I didn't look up any notices to see if they were recorded; there was assessment work done, but I can't say whether the assessment work has been kept up personally or not—the assessment work has been kept up this year.

Q. When was the Yakima patented?

A. I don't know—in fact, I won't be positive it is patented. It has been surveyed for patent I should judge from the stakes.

Q. How many claims are there up there?

A. Eight or ten.

Q. Is it on any creek?

A. It lies just east of Bullion Creek.

Q. Bullion Creek is a small creek?

A. No, it is one of the principal sources of water we have.

Q. Where does that flow into Gastineau Channel?

A. Just below the Mineral Queen claim, at the east end of our property. [1096]

Q. Down below the Mexican mill?

A. Beyond the Mexican mill.

Q. That is some of the water that has been acquired since you have been here?

A. That is some of the water that has been taken up and put to use since I have been here, yes—it is surface water; we have a number of other ditches tapping the same creek further up.

Q. Did you locate the water on that creek?

A. I appropriated it.

(Testimony of R. A. Kinzie.)

Q. Had it been previously located?

A. Not that I know of.

Q. You don't know whether it had been previously located by your company or not?

A. At the time we took it up? No, I think not—it is surface water and only flows part of the year.

Q. What about the creek—had that been located?

A. Yes.

Q. When did you locate that?

A. Our upper Treadwell water right is one of the oldest water rights over there; that takes it up about half a mile, maybe three-quarters of a mile above that point.

Q. What about that Bullion Creek water location as compared with the Yakima locations?

A. I don't know of their having any water rights—they never had a mill.

Q. What about their lode locations—do you know when they were located?

A. No, I do not—not the date.

Q. When was it you constructed across the Johnson property and the Yakima property?

A. That ditch doesn't cross any land belonging to Johnson—that [1097] I know of. That is another ditch—that is a lateral ditch.

Q. When did you construct the ditch across the Yakima property?

A. That is about five years ago, perhaps a little more—no, it is hardly that; between four and five years ago.

Q. And you took the water out up above the Ya-

(Testimony of R. A. Kinzie.)

kima property? A. No, on the Yakima property.

Q. Did you ever locate that water?

A. We did; that was located, I should say, the notice was posted just before we started working there—I should say four or five years ago.

Q. You didn't know at that time where the owners of this property were or who they were, only you knew it was the Yakima property?

A. I knew in a general way where they were. I believe their headquarters were in Seattle.

Q. The big Treadwell ditch that traverses the mountain-side over here on the island, the major portion of that big ditch was constructed before you came here?

A. Long before I came here—it was built when I came here.

Q. The part you have extended around up the beach here, whose ground did the extensions of your ditch extend over?

A. Well, part of the ditch, as I said, was on the public domain and our dam site and reservoir sites were on ground belonging to us.

Q. And the extensions then were either over Government land or ground belonging to your company?

A. At the northwest end of the island; yes.

Q. Have you told all about the different branches of the Treadwell ditch and its feeders, etc.?

A. No, there are numerous feeders. [1098]

Q. All the way up to your tunnel there are feeders? A. Yes, sir; there are.

(Testimony of R. A. Kinzie.)

Q. You said something about the Shattuck property that that ditch crosses. Where is that property?

A. That property is between Lawson Creek and Eagle Creek.

Q. It was across that property when you came here? A. Yes, sir.

Q. Is there any other property that your main Treadwell ditch crosses that don't belong to your companies?

A. There is a point on Slate Creek. I understand there was property belonging to Mr. Nowell, but I don't know whether that is true or not—I never looked into it.

Q. Did that main ditch cross the Bear's Nest property when you came here?

A. Yes, the ditch has been widened out, enlarged, since I have been here, on the same property the old ditch was enlarged. That is the west extension of the ditch.

Q. Whose other properties were crossed by any portions of it besides those you have mentioned?

A. There is a lateral ditch coming down from Parish Creek, down and over the Bear's Nest ground—that goes over a corner of the Jersey City.

Q. Was that ditch there when you came here?

A. No, it was not—that was built last year. I think it went over what is called the Jersey City. I say that simply from what the men told me—they said one of the claims extended that far. Mitchell told me that; he is here now.

(Testimony of R. A. Kinzie.)

Q. Where is the headquarters of the Jersey City Company? A. I think it is in Juneau.

Q. What is the name of the company? [1099]

A. I think it is called the Jersey City group. I don't know whether it is a company or not. That is all I know about it. I think Mike O'Connor is one of the owners; Jim Mitchell is an owner; Cordwood Jim was an owner, and I think there is a man in Juneau who is an owner.

Q. Is that property abandoned?

A. No; they are working that property each year.

Q. Keeping up the assessment work?

A. They are doing more than keeping up the assessment work. They sank a shaft and ran a number of drifts.

Q. What creek do you tap with that ditch?

A. Paris Creek.

Q. Does Paris Creek run across O'Connor's property?

A. I think at a point further up. I have never been around the property.

Q. What sized creek is that Paris Creek?

A. It drains that Basin on the west side of Mt. Jumbo—it is a creek, I should say, a couple of miles long.

Q. Is there any other property connected with this ditch? With the Treadwell ditch and its feeders? A. None that I know of.

Q. You said something about the Sheep Creek property—that is the water rights that are in litigation in this court?

(Testimony of R. A. Kinzie.)

A. I didn't know the water rights were in litigation. Yes, there are a number of suits, I remember now.

Q. When did you go down there to install that plant of Sheep Creek?

A. That plant was installed last year—started the year before and finished last year.

Q. You have your pole lines down Gastineau Channel and across the channel up here above the town, conveying the power over [1100] to your mill? A. Yes, sir.

Q. It crosses the channel and conveys the power over to the Treadwell mill?

A. Yes, I understood you to say Treadwell.

Q. You don't know what, if any, agreements exist between the Indiana Company and the Jualin Company about crossing any of their property?

A. I do not.

Q. Do you know whether or not the Indiana Company is still keeping up the assessment work on their property or not?

A. I have not been there for five or six years—I don't know whether they were at the time I was there.

Q. You don't know anything about the agreements, if any existed, between any of these other companies you testified concerning on your direct examination except those companies that you have been superintendent of?

A. I know the physical conditions, that is, I have been over the ground.

(Testimony of R. A. Kinzie.)

Q. But you don't know anything about the contract or agreement under which or by which any of the property was crossed with ditches and flumes other than the property of which you are superintendent? A. I do not.

Q. You testified concerning a water right that belonged to your Mexican mill—that is part of the Mexican?

A. Yes, part of the Mexican system; there are three distinct systems of water.

Q. Whose property did you cross with your flume-lines to convey water to the Mexican mine?

A. We crossed a number. [1101]

Q. What water did you take, from what creek?

A. From three creeks—Ready Bullion, Bullion Creek and the intermediate creek. I have forgotten the name of it now.

Q. Your Ready Bullion location water right is one of the oldest locations over on the island?

A. Yes; Ready Bullion creek is one of the oldest locations on the island—that is the Mexican water right.

Q. Over what individuals' property did you cross with that?

A. On the creek itself there are some claims—I have not been there in four or five years now.

Q. Was that waterworks in operation when you came here? A. It was.

Q. Then you don't know, individually or personally, by what agreement or right these people gave permission to them to convey the water originally

(Testimony of R. A. Kinzie.)

across their claims?

A. I do not. I simply know it is on their property.

Q. What other water is conveyed to your Mexican mill?

A. The only addition to the Mexican mill that is on property other than our own is the lateral ditch I spoke of on direct examination. It takes up from this small draw between Paris Creek and Bullion Creek.

Q. Had the water been appropriated from there when you came here? A. It had not.

Q. That is one of the new extensions?

A. That is an extension.

Q. And it has been put in there since you came here? A. Yes.

Q. Whose property does it cross?

A. It crosses this property that, I believe, belongs to Johnson and Cordwood Jim and goes over and joins our main Mexican water system above the penstock. [1102]

Q. And that has been abandoned, you say?

A. Yes.

Q. There is another creek you tap on the Mexican?

A. No; there is no other on the Mexican. There is a creek in between Bullion and Ready Bullion creek. I don't recall the name of it now.

Q. What other water rights over there have you that cross property that do not belong to your companies?

A. The Ready Bullion or the United Company

(Testimony of R. A. Kinzie.)

water right—that crosses the Yakima and some claims I don't know the owners of.

Q. I cross-examined you about that a while ago?

A. Yes, sir.

Q. Besides what I have cross-examined you about, do your ditches or your flume-lines cross anybody else's property over there other than you have already testified to?

A. There is no other ditches we have in active service at the present time on Bullion Creek. Crossing the property that belong to Capt. Johnson, Mr. O'Connor and, I think, the Sunset Alaska Company, there is a dam or ditch on their property that took the water from Bullion Creek and took it over to our Mineral Queen claim.

Q. Was that water dam there when you came here? A. It was.

Q. You don't know anything about any agreement that was had before you came here concerning that water right? A. I do not.

Q. Coming down to this Gold Creek water right—you stated, I believe, in your answer that when you went upon Gold Creek to take up this water or had the man go on, that the water of Gold Creek was unappropriated water, etc., except, I believe, you excepted what Ebner had been using heretofore, and you excepted a certain water right of that creek that belongs to the Electric Light Co.—I think that is all the [1103] water rights that you recognized on Gold Creek, is it not?

A. I don't think we recognized an Ebner right be-

(Testimony of R. A. Kinzie.)

low our intake; no.

Q. You know where the old Jualpa high line flume is up there? A. Yes.

Q. If that is an outstanding existing water right, that would be a prior water right to any water right that you are now claiming on Gold Creek? Answer that yes or no.

A. I can't answer it by yes or no.

Q. Now, the intake of the old Jualpa flume is above your intake, is it not?

A. Our present intake, yes—that is where their intake was.

Q. There is a dam there across the creek?

A. Part of a dam; yes.

Q. If the Jualpa Company ever owned any water there and have not abandoned it, their water right would be a prior one to your water right, would it not?

A. Subject to that supposition, it would be.

Q. Coming on down the creek and up here this side of the Gold Creek bridge is the intake of the Juneau Water Company which furnishes the town of Juneau with water? A. Yes, sir.

Q. I will ask you if it is not a fact that your engineers, Mr. Whalen and another engineer over there, I will ask you if they did not come over here with your knowledge and testify on behalf of Lewis' Company to aid and assist in establishing the fact that Lewis Water Company was entitled to the entire flow of Gold Creek over that bed just above Gold Creek bridge.

(Testimony of R. A. Kinzie.)

Objected to as incompetent, irrelevant and immaterial and not cross-examination. Objection overruled. Defendant excepts. [1104]

A. I knew nothing about what they were going to testify, and I don't remember that I knew which side they were going to testify for—they were offered some outside employment and they took it.

Q. You know they were over here testifying in that case?

A. I know they were over here to testify in some case.

Q. You know that Clark Hile was president of the Jualpa Company? A. Yes.

Q. Did you have any talk with Clark Hile, the president of the Jualpa Company, about your people coming over here and taking part in that water fight?

A. Not that I remember.

Q. You know the Boston group of claims right here near the mouth of Gold Creek that belongs to Mr. Ebner and some other people?

A. I know Wagner has a claim there called the Boston group.

Q. And you know Mr. Ebner is interested in that property too?

A. I think he is to some extent; yes.

Q. You know he has been sluicing out there and using water there more or less for years in opening up and developing that property, all of which is above your present intake on Gold Creek?

Objected to as incompetent, irrelevant and imma-

(Testimony of R. A. Kinzie.)

terial. Objection overruled. Defendant allowed an exception.

A. They have been using some water. I don't know where they get it. I thought that water was coming from the Electric Light Co.'s ditch. I am not sure of that. They might have a water right there for all I know; if it has, our right is subject to it.

Q. As I understand it from your pleadings and contention in [1105] this case, you propose to take the entire flow of Gold Creek out at your intake and convey it down to the beach here at Juneau for the use of generating power for a mill you *expect build* on the sea level?

A. I don't think anything of that sort was said. We set a definite quantity of water we would take from Gold Creek.

Q. Yes, but you are taking 20,000 miner's inches out of the creek—you are claiming to?

A. We claim that amount of water.

Q. And you state in your answer there is not any more than 20 or 25,000 miner's inches in that creek—you call it a very small creek?

A. Possibly at times there is not that much.

Q. Then, if you go ahead with this undertaking you have testified concerning and construct your mill at sea level you intend to take all the water out of Gold Creek, convey it down to the beach to use it in this mill and then turn it out into Gastineau Channel?

A. No, we do not.

Q. You say you do not. What do you mean by

(Testimony of R. A. Kinzie.)

that, that you were not going to turn it into Gastineau Channel or didn't mean to take all the water out of the creek?

A. We don't mean to take all the water out of the creek.

Q. Some seasons you take all and a great deal more, too?

A. We couldn't do it. There are water rights prior to ours, but that water would have to come down the creek.

Q. There is a great deal of mining property claimed by other individuals from your intake down Gold Creek to Gastineau Channel, are there not?

A. I couldn't say there is a great deal. There are some claims belonging to Caro. The Colorado property is not on the [1106] creek; the Jualpa Company property is on the creek.

Q. Coming on down the creek below the Jualpa Company property there are some mining claims patented by Dick Lewis?

A. Yes, I think there is one claim there.

Q. And coming on down here you find quite a group of claims patented by the Boston Company you have just spoken of?

A. There are some claims there belonging to the Boston group.

Q. And coming on down further you strike an unpatented claim claimed by old man Seator?

A. Not that I know of.

Q. Seator, the gardener—you know him?

A. Yes.

(Testimony of R. A. Kinzie.)

Q. Haven't you seen the claim he has there?

A. I have not.

Q. You come below his property and you strike the property of Shattuck, patented into a placer mining claim?

A. I don't know that property; that must be in town.

Q. Yes, right in town across the creek there?

A. I don't know it.

Q. There is quite a bit of the Ebner property that your company don't claim below your intake, then?

A. That seems to be a question. I don't know what belongs to the Ebner Company.

Q. You know the Cape Horn property that is below your intake?

A. I heard Mr. Ebner say that belonged to him.

Q. There are several claims there, whoever they belong to? A. Yes.

Q. You know that every foot of land from the mouth of Gold Creek to the Colorado claim is taken up as mining property? A. I think it is.

(By Mr. HELLENTHAL.)

Q. Is any of your property between the Colorado and the mouth [1107] of Gold Creek in operation? A. No, sir.

Q. Has any of it been in operation for a number of years?

A. The last operation I know of was some hydraulic work done in the Basin by the Jualpa Company.

Q. How long ago was that?

(Testimony of R. A. Kinzie.)

A. Six or eight years ago.

Q. What is the capacity of your intake on Gold Creek? How many miner's inches do you take out of the creek approximately?

A. The opening is 3x3 with a grade of 5/10 per cent.

Q. About how many miner's inches would that carry? A. I couldn't say.

Q. Can you tell approximately?

A. No, I cannot.

Q. About how many miner's inches does the creek carry when the water is high?

A. Why, the creek has a wide fluctuation—it goes from almost nothing in the winter-time up to, I should say, between 30 and 40,000 miner's inches of water—perhaps more.

Q. Your flume would carry—probably range from 2 to 3,000 miner's inches?

A. Yes; somewhere in that neighborhood.

Q. Probably 5,000?

A. Yes, I think it would—it could be figured very easily. I have forgotten exactly.

Q. Do you know about the construction of the water ditches by the Nevada Creek Company?

A. I have seen the ditches; yes.

Q. When were they constructed?

A. There was some work done there about six years ago. [1108]

Q. Do you know the claim testified to as the Corbus claim across which the ditch Mr. Hudson testified to was built? A. I do.

(Testimony of R. A. Kinzie.)

Q. Do you know when that ditch was built?

A. No; I can't say I know when the first ditch was built, but I know there was work done on the ditch about six or seven years ago.

Q. Did anybody ask you for any consent?

A. No, they did not.

Q. You had charge of and were looking after that property at that time? A. In a general way only.

Q. You testified about enlarging the main Treadwell ditch across the Bear's Nest. When did you do that?

A. There was some work on that last year and some more work was done this spring—in fact, it is work that has been going on for the last four years.

Q. Did you obtain the consent of anybody, of the owners of the Bear's Nest property, to enlarge that ditch? A. No; we did not.

Q. Did anybody oppose your right to do so?

A. They did not.

Q. Or question your right? A. No.

(By Judge WINN.)

Q. Do I understand you to say that you are not seeking to appropriate from Gold Creek any more than two or three thousand miner's inches of water?

A. No, sir, you did not.

Q. You mean your flume, the flume you have at present constructed would convey about two or three thousand miner's inches? [1109]

A. No, I do not.

Q. What will your flume already constructed carry?

(Testimony of R. A. Kinzie.)

A. I can't say offhand. I would have to figure it.

Q. Have you ever figured it? A. I have.

Q. How much—give the Court a general idea.

A. I disremember what it was. I don't wish to make an estimate—it is a 3x3 flume inside and a grade of 5/10 per cent.

Q. Did you say a few minutes ago to Mr. Hellen-thal that that flume would carry about two or three thousand inches, miner's inches, of water?

A. Mr. Hellenthal said that.

Q. Can you give the Court an approximation of what the flume would carry?

A. No, I don't care to do so.

Q. What kind of boards did you make it from?

A. There are four by four springs in the bottom, boards 4x4 and caps four by four. The bottom is a beveled bottom of inch boards. The sides are made of four-inch boards battoned on the bottom with a 1x12 and the rest all battoned.

Q. You consider that a first-class flume?

A. It is a very good flume.

Q. There is a whole lot of gravel and stuff comes down Gold Creek by reason of the operations up above? A. Yes.

Q. There is a placer mine up there that has been worked for several years—the old Nowell placer?

A. Yes.

Q. That is worked nearly every season?

A. Yes.

Q. And above that is the one-hundred stamp mill of the Perseverance [1110] Company with dams

(Testimony of R. A. Kinzie.)

into the creek? A. Yes, sir.

Q. Does your debris and stuff find its way down to Gold Creek from your mill?

A. Practically none of our tailings; no.

Q. But there is a great deal of stuff that comes down there that is calculated to wear flumes?

A. Yes.

Q. And also to wear rocks? A. It would; yes.

Witness excused. [1111]

[Testimony of Thomas McConney, for Defendant.]

THOMAS McCONNERY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Juneau.

Q. How long have you resided here?

A. Since 1885.

Q. Ever since you have been here what has been your business? A. Mining and prospecting.

Q. Do you know the customs of miners in this district governing the appropriation of water?

A. Yes, sir.

Q. I mean the mining district surrounding Juneau, the Harris mining district and other similar mining districts around Juneau and Southeastern Alaska. A. Yes, sir.

Q. How can water be appropriated under the custom of miners?

(This testimony is subject to the same general objection, which is overruled and exception allowed.)

Q. State how the right to the use of water can be

(Testimony of Thomas McConney.)

acquired under the miners' rules as you understand them in this district.

A. The water can be located if it is vacant and run by a ditch or flume on any claim a person wants to work on.

Q. How is the water right acquired, by taking the water, using it or by just getting the land on the bank of the creek—what does one do to get a water right?

A. He puts up a location notice and claims the amount of water he wants to use and ditch with which he will flume it out of his ground. [1112]

Q. And put it to use? A. And put it to use.

Q. What right under the customs of miners has one seeking to appropriate water to cross the mining claims of others with ditches, flumes and dams and other ditch, appurtenances and canals in order to effect his diversion and appropriation?

A. There has not been any argument about it that I have heard. I never heard any argument about taking water across another person's ground.

Q. Under the custom as you know it, has the appropriator of water a right to build ditches and flumes across another person's unpatented mining claims?

A. Yes, he has, the way I have always understood it, and that has always been the practice here.

Cross-examination.

(By Judge WINN.)

Q. Did you ever build any flumes across anybody's property? A. I have—I helped to build them.

(Testimony of Thomas McConney.)

Q. What flumes did you help to build?

A. I helped to build, not a flume, but a ditch, in the Silver Bow Basin—Pete Bulger and Jack Olds and George Hartrader owned the ditch—it was a ditch sometimes called the Hartrader ditch and sometimes the Bulger.

Q. You helped work on that ditch? A. Yes.

Q. You didn't have any interest in the ditch property itself? A. No.

Q. You don't know what arrangements, if any, they had with anybody whose property it crossed, do you? A. No, I don't know.

Q. That is about the only experience you have had in ditch [1113] building, is it, here?

A. Well, I had some experience in what is called Wyndam Bay now, in the early days—in 1877.

Witness excused.

[Testimony of George Miller, for Defendant.]

GEORGE MILLER, called and sworn as a witness in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you been here?

A. Twenty-four years.

Q. Have you been engaged in the mining business, more or less, ever since you have been here?

A. Yes.

Q. In quartz and placer mines both?

A. Yes, sir.

Q. Do you own some quartz mines in Silver Bow

(Testimony of George Miller.)

Basin—did you own some? A. Yes.

Q. And placer mines in Porcupine?

A. I did own some there. I have sold them now.

Q. And you operated them yourself? A. Yes.

Q. Do you know the customs of miners in the mining district surrounding Juneau, including the Harris and other districts located in the Juneau gold belt, governing the appropriation of water and the acquisition of water rights?

(This testimony is subject to the same general objection. Objection overruled and plaintiff allowed exception.)

A. Yes.

Q. How can a water right be acquired?

A. We use water for power and to drive wheels with, and we have [1114] to go up the creek and get a certain fall, and we surveyed out a ditch for a flume wherever the ground was and took out the water.

Q. What right, if any, under the miners' custom as you understand it, has an appropriator of water or one seeking to effect an appropriation of water to cross the mining claims owned by persons other than the appropriator?

A. Why, he just crosses their ground or crosses our ground so long as they didn't interfere with us and we didn't interfere with them.

Q. That is the right one party extended to another? A. Yes, sir.

Q. Have you ever built any ditches across the ground or mining claims of others than yourself?

(Testimony of George Miller.)

A. Yes, sir.

Q. Whose claims have you built across?

A. We built across the placer and bench claims, and on our own claim—we took the water out of the discovery.

Q. Did you take the water off the discovery claim itself? A. Yes, sir.

Q. Whose claim was it?

A. Maloney & Dalton.

Q. Did you ask anybody's permission to go and take it?

A. Not that I remember—we might have talked to them about it.

Q. Was a consent or right of way given you or anything of that kind to take the water?

A. No, I didn't hear anybody give it.

Q. Did you take water off your claim? A. Yes.

Q. Who were the parties? A. Frank Tascher.

Q. Did he ask you for any consent?

A. They were talking about it—they put in a wheel and measured out the ditch and flume. [1115]

Q. You were right there on the ground and saw them work? A. Yes.

Q. Was any special consent given for it?

A. No; no written consent or anything like that. It was just go ahead and take it out.

Q. When was this that these ditches were built?

A. It was in 99–1900 and 1901.

Cross-examination.

(By Judge WINN.)

Q. That was up on Porcupine Creek? A. Yes.

(Testimony of George Miller.)

Q. You people were friendly to each other and just had a kind of mutual understanding up there?

A. Yes, we were all friendly. We lived right there.

Q. And had a kind of mutual understanding that each one of you was to go ahead and use the water as long as you did not deprive the other fellow of his water?

A. We had to have water to drive an overshot wheel—we had to go up the creek so far and when we struck the height we took it out.

Q. There was some mutual understanding among the people in the Porcupine?

A. Yes; it was a friendly understanding.

Q. Did you testify about any ditches up Silver Bow Basin?

A. No; I had nothing to do with the property up there.

Q. Where was the other property you had anything to do with?

A. We fetched in a ditch back of Porcupine City—there was a little creek there; I forget the name of it now. We fetched it along the hillside and along the Tascher bench claim.

Q. That was according to the mutual understanding you had up there about the use of water?

A. Yes. [1116]

Q. That was up on the Porcupine? A. Yes.

Q. In the Porcupine mining district? A. Yes.

Q. That is the only experience you had?

A. Yes, sir; that is all.

Witness excused.

[Testimony of Perry Wells, for Defendant.]

PERRY WELLS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You reside in Juneau? A. Yes.

Q. How long have you lived here?

A. I have been in Southeastern Alaska since 1896—not in Juneau all the time.

Q. And you have been in this district and the Juneau mining district since '96? A. Yes, sir.

Q. What business have you been following in Juneau? A. Mining.

Q. Since you have been in the district?

A. Yes,—mining.

Q. Have you operated mines of your own?

A. Yes, sir.

Q. In the Juneau district?

A. No—in Southeastern Alaska.

Q. Do you know the customs of miners governing the appropriation and acquisition of water rights in this district?

(Same general objection. Objection overruled and exception allowed.)

A. I know by my personal experience and general observation; yes. [1117]

Q. Under the custom of miners how are the rights to the use of water acquired?

A. By posting a notice and taking out the water and appropriating it.

Q. What right, if any, under the miners' custom

(Testimony of Perry Wells.)

has the appropriator of water or one seeking to acquire a water right by appropriation to cross mining claims owned by others than the appropriator in the construction of ditches and canals and other appurtenances to his ditches?

A. In my experience with one ditch we put in in the Porcupine, we spoke to the boys about it and went through with it.

Q. No one interfered with your building the ditches? A. No, sir.

Q. Across the ground of different parties?

A. No, sir.

Q. Under the miners' customs, has the appropriator a right to cross those intervening claims if he has to do so in order to get the water on his claim?

A. Under my observation, he just goes across—there is no particular bar to his going across as long as he doesn't damage the other party.

Q. If he damages the other party, he has to pay the damage? A. Yes, sir.

Q. You built one ditch you say under the circumstances narrated? A. Yes, sir.

Q. And how many people's mining ground did that cross? A. There was about five or six, I think.

Q. Whose ground did it take the water off of?

A. It took it off Government land. At the intake, there was a water right there, but we filed an additional water right—it was a glacier stream—and in July and August there would be [1118] about four to six times the amount of water coming down there than they claimed.

(Testimony of Perry Wells.)

Q. And you never obtained any permit to cross those claims?

A. No, nothing more than speak to them, some of them.

Q. They were right on the ground and you spoke to them? A. Yes, sir.

Cross-examination.

(By Judge WINN.)

Q. That was the Porcupine ditch people up there?

A. Yes.

Q. There was a kind of mutual understanding that on the waters of McKinley Creek and Porcupine Creek you parties were going to use the water, all of you?

A. The ditch we put in went up on the right-hand side, went up the main Porcupine and was taken out of Corser Creek, it didn't go on the McKinley Creek side.

Q. Taken out of Government land?

A. Yes, sir.

Q. There was a kind of mutual understanding in working those placer claims up there that you people were not going to raise any row about going across other people's property, but you went and got their consent to it before going across?

A. Yes, we spoke to them about it.

Q. That is some of the workings George Miller testified to?

A. No—it is on the same creek, but our ditch was not the same ditch.

Q. You own some quartz claims?

(Testimony of Perry Wells.)

A. Yes, sir.

Q. If you had a creek on there and were using some water or contemplating to use it, would you permit anyone to go on your premises and take it off of there? A. Not if I wanted to use it.

(By Mr. HELLENTHAL.)

Q. If you were not using it and didn't claim any right to it [1119] under your location for your own use, you would permit anybody to go on there and take the water out?

A. I suppose I wouldn't have anything to say about it.

Witness excused.

[Testimony of John Lockhart, for Defendant.]

JOHN LOCKHART, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. You reside on Douglas Island? A. Yes.

Q. How long have you resided in Alaska?

A. Eight years.

Q. What business do you follow?

A. Mining, most of the time.

Q. What was your business before you came to Alaska? A. Mining.

Q. You have been working mines for other people, as boss and different positions, in charge of properties? A. Yes.

Q. Do you know the customs of miners in the Harris mining district and surrounding districts, surrounding the town of Juneau, in the Juneau district, recording district, in the Southeastern district of

(Testimony of John Lockhart.)

Alaska generally with reference to the appropriation of water?

(Same general objection. Objection overruled and exception allowed.)

A. I ain't so very well acquainted with the miners' rules here.

Q. Do you know in a general way what the custom has been about appropriating water since you have been here? A. Yes.

Q. How is it done? How is a water right acquired in this country? [1120]

A. You have to locate it, put up your notice, build your flume for ditches, and if you want to run it across anybody's land, if you damage them you have to pay it, and if they are working below in the creek if your ditch goes over them and they dig it out, you have to put in a flume so it don't bother them—you have to fix it so you ain't interfering.

Q. If you build a ditch across and do any substantial damage, you are liable in damages, is that your answer? A. Yes.

Q. Subject to that restriction, have you a right to cross unpatented mining claims of others with the ditch? A. Yes, sir.

Q. Does it make any difference whether you take the water off of a mining claim or whether you cross to get to a mining claim or get above a mining claim—does that make any difference?

A. I don't know.

Cross-examination.

(By Judge WINN.)

Q. You don't pretend to be a water expert?

(Testimony of John Lockhart.)

A. No, I am not a water expert.

Q. You haven't had much experience in taking up water and devoting it to use in Alaska?

A. Not here; I have not.

Q. You used to work up here with the Jualpa Company? A. Yes, sir.

Q. Do you know how the Jualpa Company got its water right up there from Ebner?

A. I think it paid for it.

Q. Are there any other instances you know of of the application of water here—that you have any personal knowledge of, any other water rights except the Jualpa? [1121]

A. No, not here in this country.

(By Mr. HELLENTHAL.)

Q. While you were in charge of the work for the Jualpa Company did you build any ditches?

A. No, we didn't build any ditches; we built a flume.

Q. Did you take any water off of the property of the Alaska-Juneau Company? I call your attention to the Colorado claim—did you take any water off of the Colorado claim?

A. All the water we got from up there, we had to build a dam across the creek, build a side flume to turn the water around, so we built the dam in there—I guess that was on what we called the McCulley claim then—and then we came down along the Treadwell people's claim on the line of the flume; they had a small flume there—that brought the water around until we got the dam built, and then we tore

(Testimony of John Lockhart.)

that flume up and ran the water over to the dam.

Q. When you say the Treadwell people you mean the Alaska-Juneau Company? A. Yes, sir.

Q. The property referred to as the Wyoming, or the Idaho placer? A. Yes.

Q. Did you ask the consent of the Treadwell people to do that?

A. I don't know how that was. Mr. Hampton was superintendent and I was working under him.

(By Judge WINN.)

Q. What water was that—the Jualpa high line flume doesn't touch the Treadwell Company's property?

A. We had to put a rock dam up above the dam we put in there—we put a rock dam way up a little below Snowslide Gulch and then we built a flume and ran it around on the grade of the big flume to get the water out of the creek. [1122]

Q. So you could build a big dam? A. Yes.

Q. That was temporary works you put in there?

A. Yes; we had part of it finished and then to get the other part in, all we had to build, we built that flume to turn the water.

Q. After you got through with that temporary work it was all taken out? A. Yes, sir.

Q. And whatever arrangement was made about that was made by Mr. Hampton, who was building the big flume for the Jualpa Company?

A. Yes, sir.

Witness excused.

[Testimony of ——— Howell, for Defendant.]

——— HOWELL, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Juneau.

Q. How long have you been in Alaska?

A. Ten years.

Q. What has been your business since you have been in Alaska?

A. Mining, most all of the time.

Q. In Southeastern Alaska and around Juneau?

A. Six or seven years around Juneau. I was at Nome two summers.

Q. You followed mining for some years before you came to Alaska? A. Yes, sir.

Q. Do you know the custom of miners governing the acquisition of water rights in the Harris mining district and surrounding districts located near the town of Juneau and in Southeastern Alaska?

A. Well, I understand that when there is water running to waste [1123] a man can take it up and cross any claim as long as he don't damage the party he is running over—if he does, he pays the damages.

Q. The right to the use of water is acquired by taking up the water—conveying it and using it?

(Testimony subject to same general objection. Objection overruled and exception allowed.)

A. Yes, sir.

Q. If in appropriating the water it is necessary to cross the mining claims belonging to others, quartz or

(Testimony of ——— Howell.)

placer, the appropriator has the right to cross with his ditch, flumes, canals and other appurtenances?

A. I understand so, where I have mined.

Q. That has always been the custom? A. Yes.

Q. Where have you mined?

A. Idaho, Montana, Colorado, Alaska.

Q. It has been the custom everywhere you have ever been? A. Yes, sir.

(By Judge WINN.)

Q. All you know about this custom prevailing in Alaska is what you heard other people say—you have not run across anybody else's property in Alaska?

A. Yes, at Nome I did. I have not mined on my own account here.

Q. You had control of the Salmon Creek property out here?

A. I have—that is not a mining property, though; there is some mining claims there.

Q. Have you kept up your assessment work on mining claims up there yourself? A. Yes, sir.

Q. The other property up there as far as the mining property is concerned has been abandoned?
[1124]

A. No, I have represented there every year.

Q. You have? A. Yes, sir.

Q. And also represented the water?

A. Yes, sir.

Q. You didn't cross anybody else's property with your water?

A. No, we owned all the property there.

Q. Where have you operated in Southeastern Alaska?

(Testimony of ——— Howell.)

A. I said I had never operated any mines here in this part—at Nome I did.

Q. All you know about this custom is what you have heard these people say and some people testifying in the courtroom here, here in this vicinity?

A. Yes; but at Nome I crossed other people's property.

Q. That is all in Southeastern Alaska?

A. Yes.

(By Mr. HELLENTHAL.)

Q. That Salmon Creek property—what kind of property is that?

A. It is a water-power property—a water right property.

Q. You have had some experience with the Salmon Creek water? A. Yes, sir.

Q. (By Judge WINN.) Your water right up there and mining property is all together?

A. Yes, sir, it is all adjoining.

Witness excused.

Mr. SHACKLEFORD.—We desire to offer in evidence certified copy of proof of labor on the Oregon lode for the year ending December 31, 1901. (It is marked Exhibit 51.)

Judge WINN.—That, of course, is the Corbus location.

Mr. SHACKLEFORD.—Yes, sir.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial, and in view of the testimony already offered there has not been any work done on it since 1905. [1125]

Objection overruled. Plaintiff allowed an exception.

It is admitted as Defendant's Exhibit 51, certified copy attached hereto and made a part hereof.

Mr. SHACKLEFORD.—Also proof of labor in 1900 on the same claim.

Same objection. Overruled. Plaintiff allowed an exception.

It is marked Defendant's Exhibit 52, attached hereto.

Mr. SHACKLEFORD.—Also for 1902.

Same objection. Overruled. Exception attached hereto.

It is marked Defendant's Exhibit 53.

Mr. SHACKLEFORD.—Also for 1903 and 1904.

Same objection. Objection overruled. Plaintiff allowed an exception.

It is marked Defendant's Exhibit 54, attached hereto.

Mr. SHACKLEFORD.—I want to recall Mr. Stewart. [1126]

**[Testimony of B. D. Stewart, for Defendant
(Recalled).]**

B. D. STEWART, a witness called and sworn in behalf of the defendant (recalled), testified as follows:

(By Mr. SHACKLEFORD.)

Q. I will ask you if since yesterday you have made any excavation on the boulder mentioned in the testimony here at the discovery point on the Parish #2 lode claim, since you were last on the stand, with

(Testimony of B. D. Stewart.)

reference to whether it is slide rock or rock in place.

Judge WINN.—We object to that. The witness had been withdrawn from the stand. We do not think he should be permitted to go back to the property to gather up further information as to the discovery and then have them reopen the case on that one proposition. If this is admitted, we would not want to be forced to go ahead to-night—we would not want to be forced to close to-night.

Objection overruled. Plaintiff allowed an exception.

A. I have.

Q. Just state to the Court what was done.

(Same objection to all this testimony. Overruled and exception allowed.)

A. I went up yesterday afternoon on my own initiative and re-examined the ground and did a little picking around there myself and some pick and shovel work underneath the boulder, and went up this morning and dug an open cut, what I considered about the level of the lowest part of the boulder, underneath the boulder for a distance of about seven feet horizontally from what would be the southerly side of the boulder, the one toward the open cut; that brought me almost under the centre of the boulder. Then I sunk or had sunk a little shaft about three feet wide and 4 feet long, [1127] perhaps, and we sank down here until we got to a depth of from five to six feet beneath the lowest part of the boulder as it showed underneath. That little shaft was entirely in drift matter, drift material; the bottom of the

(Testimony of B. D. Stewart.)

boulder was plainly visible, however, and very distinct and plain—everything above it was a solid mass of rock and everything beneath it was loose gravel and boulders of very heavy igneous character—they were granite boulders, pieces of granite and other rock that was entirely different from the boulder itself. As further evidence of being a boulder, when we got to the open cut underneath the entire mass gave evidence of breaking away from its position, and we had to timber it up in order to keep it from falling. I obtained samples from the bottom of the shaft.

Q. Have you those samples?

A. I have. I would further state in regard to that shaft—the bottom of the shaft, I should judge, was about 8 or 10 feet in elevation below the bottom of the open cut as it was before the small pit was dug in the bottom.

Q. These are the samples, are they?

A. They are.

Q. I hand you this sample and ask you to state what that is.

A. That is a piece of granite containing considerable mica which I broke off of a large rounded boulder in the bottom of the shaft, at a point about 5 or 6 feet below the bottom of the large boulder and underneath the centre of the boulder.

The sample is admitted as Defendant's Exhibit 55.

Q. I now hand you another piece of rock and ask if you found that underneath the boulder—tell the Court where you found it and what it is. [1128]

(Testimony of B. D. Stewart.)

A. That is a piece of greenstone which came from the bottom of the same small shaft underneath the pit.

Q. As you found it—it was not attached?

A. No; it is a pebble I dug out of the sand—drift material.

It is admitted as Defendant's Exhibit 56.

Q. Here is another. Describe that piece, where you found it and what it is.

A. That is another piece of greenstone with some seams of white quartz in it—it came from the same place the other two specimens did.

It is admitted as Defendant's Exhibit 57.

Q. I hand you another rock and ask you to describe that in the same manner.

A. That is a piece of green dogrock, in which the crystals of feldspar can be noticed—it is drift material; it is rounded off; it is not angular as it would be if freshly broken off from a ledge or piece of rock in place or the boulder, either.

Q. Where did you get it?

A. I got it from the bottom of the small shaft.

It is admitted as Defendant's Exhibit 58.

Q. I forgot to ask you the other day, did you make any investigation of the other point mentioned by Mr. Ebner in his testimony as the place where he subsequently found value? A. I did.

Q. Did you make investigation of the ground described by him in the vicinity of the side line of the Lotta claim and not far distant from the cabin there?

A. In a general way I did.

(Testimony of B. D. Stewart.)

Q. Is there any rock in place over in that vicinity?

A. I think not; no, sir. [1129]

Q. Describe it.

A. I will state that from the Borean pit on up for several hundred feet above is slide of the same character—you don't get to bedrock until you get pretty well up the hillside, above the Lotta claim, I should say, on that particular line, a line drawn east of the Borean pit.

Q. Did you hear him describe an open cut on Gold Creek about 20 feet below the lower tunnel in his testimony the other night? A. Yes, sir; I did.

Q. Did you make an effort to find that?

A. I did.

(Same objection as to the other part of the testimony. Overruled and exception allowed.)

Q. Did you find a cut?

A. I couldn't find any cut in that vicinity at all.

Q. Did you find any cut at all other than what might be called an open cut in drift material in the Borean pit, where you found it?

A. We didn't find any. I measured 20 feet from the mouth of the lower Parish #2 tunnel; that brought me to a point, raised me out of the water at an angle of 60 to 80°. Slide rock all the way up to the flume. The base of this cliff is washed smooth, rounded off by the water, and if any cut had ever been there, it would be exposed at this time.

Q. You heard the testimony of witnesses here with reference to the assessment work done on these claims for a number of years, with reference to re-

(Testimony of B. D. Stewart.)

pairing a dam on the ditch that leads into the Borean pit—do you know where that ditch is, that dam? A. I know where the ditch is. [1130]

Q. Do you know where the dam is?

A. No, I couldn't find the dam. I looked for the dam and it was probably within 20 or 30 feet of snow.

Q. Did you notice it last fall? A. No, I did not.

Q. Was there reconnaissance up there sufficient to state whether that dam following up that ditch line would be on the Parish #1 or Parish #2 claims?

A. I think so.

Q. State whether it is on those claims or not.

A. I think not, from the work I did there. The opinion I have is this: I had my instrument set up at a point where the blue line indicating the stream crosses the southeasterly end line of the Parish #2, and I sighted up along the ditch line that comes down there over the brow of the hill and followed back up on that line until I came to the brush, which line indicates the projection in the southeasterly direction of the Lotta side line on the ground and apparently the ditch seemed to continue in that direction.

Q. Over into the Royal ground?

A. Over into the Royal ground.

Q. You are pointing to exhibit 7?

A. Yes, sir, exhibit Number 7.

Q. So with the ditch within the two Parish side lines, the dam is not to be found?

A. I couldn't find it.

Q. And the ditch continues on beyond that side line?

(Testimony of B. D. Stewart.)

A. Yes; I wouldn't call it a ditch. It is where the water is flowing—has flowed down through there, cut through the wash.

Q. That is the only ditch leading into the Borean pit? [1131]

A. That is the only evidence of anything of the kind I could find.

Cross-examination.

(By Judge WINN.)

Q. How far did you go over that ditch?

A. I followed over to the snow line, as near as I could go.

Q. Did you follow it over until you got outside the lines of the Parish Number 1 and 2?

A. Yes, over that brushed-out line, that is brushed out for the projection of the Lotta side line.

Q. You say that you don't know whether that was a ditch or a place that had been washed out by the water coming down the hill?

A. It is very apparent it had been used in connection with the washing out of the pit—it is the only place where a watercourse comes into the pit, a watercourse of that size.

Q. You don't want the Court to understand that there never has been a dam up there in the creek, up there in Snowslide Gulch?

A. Not at all. I should judge that the only ditch I found there came from off the Royal claim.

Q. And this ditch you found don't lead into Snowslide Gulch?

A. It was leading from that direction as far as I

(Testimony of B. D. Stewart.)

could follow it over the snow. You can see from the map the general course of Snowslide Gulch. If that line was continued on there a few hundred feet it would strike on the Royal claim and intersect Snowslide Gulch about there—on the Royal claim.

Q. You would have to go up five or six hundred feet nearly to the other side of the Royal claim?
[1132]

A. I don't remember the length of the Royal claim. I think it is 1,500 feet and it would be the distance, the length of the Lotta, out here on the map.

Q. Now, the only excavation you have done up there in the last couple of days was in the Borean pit? A. It was.

Q. How many men did you have helping you there?

A. I was alone part of the time yesterday afternoon and part of the time I had one man helping me a little bit, and this morning I had two men—there were three others up there.

Q. And on the projected part of this rock that you call a boulder you excavated back underneath it about how many feet?

A. Well, if a plumb line were dropped from the face of the boulder as it faces the Borean pit and the measurement were taken from that plumb line back under the boulder as far as I got, it would be about seven feet, I think.

Q. You really excavated about how much—there was some washed out before you commenced excavating?

(Testimony of B. D. Stewart.)

A. No, it was perfectly in place before I started the excavation, that is, the drift material was in place—that is underneath the boulder it never had been disturbed.

Q. So you didn't extend any excavation that had been made there but commenced a new excavation entirely?

A. There was no excavation commenced at that point underneath the centre of the boulder—the wash was banked up a little bit alongside the boulder.

Q. You didn't get to the end of the boulder?

A. I got about under the centre of it.

Q. That is under the centre of it as it appears uncovered? [1133]

A. Yes, as she is uncovered. I made measurements below and estimated it was about under the centre.

Q. As it appears uncovered? A. Yes.

Q. Did you put any shot in there to fire off any of it—use any powder close to the bottom of the shaft?

A. I ran across a boulder, a rounded boulder, that was imbedded in the wash, and we couldn't pull that out, and I had the men drill a hole in it and shot it to pieces and found drift material underneath it—took the boulder out, dug it out.

Q. Where did you sink this shaft with respect to the excavation you dug—how far underneath the boulder, that is, from a plumb line where you started under it—did you sink the shaft?

A. The side of the shaft which is farthest in under the boulder would be about 6 or 7 feet.

(Testimony of B. D. Stewart.)

Q. How far did you sink that?

A. To a depth of about five feet below the bottom of the boulder. I could stand in the bottom of the shaft and stand right underneath the boulder and that shaft gave a cross-section of drift material, a cross-section about six feet deep.

Q. When you refer to the boulder, you refer to the big boulder, not to the one you blasted out?

A. No; to the big boulder.

Q. You say that the material in this big boulder was of such a nature you had to prop it up to keep it from falling down on you?

A. I thought it was wise to—it was rather dangerous work to work under it.

Q. Did you notice any quartz seams in that boulder? [1134] A. I did, yes, sir.

Q. Were you here when Mr. Jones testified yesterday? A. Yes; I was.

Q. Did you ever go up back on the hill there to see whether there were any of those quartz seams in any of the formation on further up the hill from this boulder—the way that Mr. Jones said he went up there yesterday?

A. I didn't get his directions very clear. I think he meant directly east from the Borean pit. I have been up there, yes. I have been up to the base of the cliff he spoke of.

Q. In that formation going up there you have seen quartz seams in that, too? A. Yes, I have.

Q. That isn't anything unusual to see in any of that formation up there—that is one of the particu-

(Testimony of B. D. Stewart.)

lar things described both by Wright and Spencer in the formation of that country there?

A. Yes, in the ore-bearing formation—within the ore zone; yes.

Q. Have you read Spencer's report as made in 1906 regarding the Juneau gold belt?

A. I have read portions of it.

Q. Have you read that portion of it which refers to the Ebner property and the Juneau gold belt in particular?

A. I have read extracts of it; yes.

Q. Did you ever see any of the report that was made by Mr. F. S. Emmons and C. W. Hayes in 1903? A. I never have read that; no, sir.

Q. Your theory, then, of that piece of rock is that it was slide that came about from what distance from where it is now in the Borean pit?

A. I should judge somewhere in the neighborhood of a thousand. [1135]

Q. A thousand feet?

A. On the slope that would be.

Q. Did you ever observe as to whether or not the seams run at about the same dip, the seams in that, as they do in the formation back of the hill that Mr. Jones testified concerning yesterday?

A. The quartz seams run in every direction.

Q. Up there?

A. Yes, sir; all through that and in the boulder, too, but there are prominent quartz seams which run in an entirely different direction from the seam he described yesterday.

(Testimony of B. D. Stewart.)

Q. You found others, did you? A. Yes.

Q. You didn't bring any samples of that rock down, where it had quartz seams in it, did you?

A. I have samples at the office—it is an entirely different quartz from the quartz you find in the schist.

Q. Then, the seams in that rock, of quartz, which you found were different from what Mr. Jones testified concerning?

A. Not different, but I am referring to other seams than the particular ones he referred to.

Q. And that boulder is of such a soft formation that you thought you would have to prop it up?

A. Not soft at all; no, sir.

Q. What were you afraid of?

A. Because it was lying on washed material, on gravel and dirt, and if you take the gravel and dirt out from underneath it, the whole thing will come down.

Q. You heard Mr. Kinzie's testimony?

A. Yes, sir.

Q. Is that the boulder he referred to when he thought it was as big as this courtroom?

A. I didn't hear him say that.

Q. Mr. Shackelford asked you something about going down to the [1136] cabin, about the cabin, and still on down the creek at some other points that Mr. Ebner testified he made discoveries on this claim—what did you find near the cabin there, did you do any unearthing?

A. I did not, no—I didn't say I had been there

(Testimony of B. D. Stewart.)

to-day or within the last few days, but I have been over that country and know the general character of it along there—in the vicinity of the cabin and on beyond there is covered with drift.

Q. To what depth?

A. I don't know. I have been up the end line of the Lotta extended up to the base of the cliff and know the character of the ground up to the base of the cliff.

Q. You didn't make any excavations there to find out the depth of it? A. I did not; no, sir.

Q. You don't wish to be understood that Mr. Ebner did not go down there to find out the character of the formation? A. No, sir.

Q. Then, you came down to another point where Mr. Ebner said he made the discovery on the creek there?

A. I knocked some pieces of rock off with my pick.

Q. You didn't do any excavating there?

A. You couldn't do any excavating; it is a solid bedrock.

Q. Where is the point you testified about that you didn't see any signs of an open cut?

A. It was twenty feet down the creek from the mouth of the lower Parish #2 tunnel and up from the creek a little distance.

Q. You simply said you didn't see any signs of any excavation having been done there?

A. I certainly did not; no. [1137]

Q. You didn't do any?

A. I did not, except to knock off some pieces of the

(Testimony of B. D. Stewart.)

rock with my pick.

Q. You know all along there where the flume-line has been put in by the defendant company and between that and the creek there is exposed bedrock there and rock in place?

A. There is bedrock and rock in place all along there; yes, sir.

Q. Almost the entire width of the Parish #2 claim and part of it is exposed in the cross-section of the creek there for several hundred feet along the creek?

A. There is bedrock exposed—I mean in the canyon *where*—

Q. It is between your flume-line and the creek bed? A. Yes, sir.

(By Mr. SHACKLEFORD.)

Q. I will hand you a map of the United States Geological Survey Bulletin No. 287, Plat #9, and ask you to examine the same and see if you can locate the Ebner mill and compressor plant on that map.

A. I see what I take to be those two points; yes.

Q. Examine the same with reference to the ground in controversy between the Parish #2 and the Oregon lode claim and with reference to the line marked footwall.

A. I see a line here, a dotted line. It is not marked footwall, but I take it it means that—it is marked black slate on the upper side, on the northeasterly side and greenstone on the southwesterly side.

Q. I will call your attention to page 61 of the same bulletin and ask you to read the description of the

(Testimony of B. D. Stewart.)

footwall in there, and after examining that, locate the footwall on the plat which you have (exhibit 49). [1138]

A. (Reading:) The paragraph is headed—Greenstones of the footwall. The greenstones which form the mountain between Silver Bow basin and Gastineau Channel are in large part metamorphosed lavas, but it is often impossible to separate the volcanic flows from intrusive material, which is likewise completely altered from its original condition. The complex as a whole is imbedded upon a large scale, and the secondary cleavage which has been developed in it is parallel with the original structure, striking northwest and southeast and dipping northeast. In many places the rock is impregnated with pyrite, either irregularly or along contacts between two layers, where movement has permitted ready access to circulating waters. Veins are also found, but for the most part these give little indication of value, though there has been considerable prospecting at several points situated at no great distance from Gastineau Channel.

Judge WINN.—I move to strike that out. That is found in this Bulletin at page 61 and doesn't locate the particular place, while at page 66 it takes up the Ebner mine and goes on and describes that. It is misleading and incompetent, irrelevant and immaterial.

The COURT.—The motion will be denied at this time with leave to renew it after the witness has finished his testimony.

(Testimony of B. D. Stewart.)

Q. I will hand the witness Bulletin 287, Plat 15, U. S. Geological Survey, and ask him to examine the same and state whether he can locate the position of the property in controversy with reference to the lines indicated as the footwall boundary of the Juneau gold belt.

A. I can from this; yes, sir.

Q. Just state to the Court from an examination of that map [1139] whether the Parish #2 lode claim is in the belt or outside the belt as defined by the footwall boundary?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The ground which would be included in the Parish #2 would lie outside of and to the south and southwest of the belt as it is marked on this map.

The plat referred to, being plat 15 of Bulletin 287, is marked Defendant's Exhibit 59 and offered in evidence.

Judge WINN.—I object to it as incompetent, irrelevant and immaterial.

By the COURT.—I consider it hearsay, but if the case should be appealed to a higher court, that Court might look at it differently and it will be in the record. Objection overruled and plaintiff allowed an exception.

(By Judge WINN.)

Q. I will ask you to take this Bulletin, issued in 1906, at page 66, and ask you if on that page and the

(Testimony of B. D. Stewart.)

following three or four pages, if a description of the Ebner mine is not entered into in detail so far as the geological survey was made?

A. It seems to be; yes, sir.

Q. I wish to identify at this time pages 66, with the plate upon it, pages 67, 68, and then the plate following 68 and down to the words "Alaska-Juneau Mine" on page 69, and I will ask the witness if that is not all devoted to a write-up by Mr. Spencer of the formation, geology, etc., of the Ebner mine?

A. Most of it seems to be an interpretation of the folding of the strata there in that vicinity in the pages you mention as related to Mt. Juneau and the Humboldt property. [1140]

Q. Is the Humboldt property included in that?

A. It is mentioned here.

Q. That is the adjoining property to the Ebner property? A. Yes, sir, northeast.

Q. You have been in geological surveys yourself?

A. Yes, sir.

Q. They are to some extent based upon a careful investigation so far as they go?

A. Yes, they are.

Q. But they don't go into it minutely to find out in every mine the formation, etc., do they?

A. They are pretty careful about that.

Q. They make the examination chiefly from the surface indications and whatever open work they find upon the property?

A. Whatever work is accessible they usually go into if they are allowed to.

(Testimony of B. D. Stewart.)

Q. They don't go into any underground workings themselves—they perform no labor?

A. Yes; to make any underground workings they have their instruments, to obtain the geology.

Q. They don't run any tunnels on the property?

A. Not on their own initiative; no, sir.

Q. They take the work as they find it at the time?

A. Yes.

The pages of the Bulletin 287 mentioned by Judge Winn are admitted as Plaintiff's Exhibit "MM."

The WITNESS.—Of course, in these geological examinations it is not possible, no matter how well trained or how much a man knows about mining, etc., it is all the same as anything else, they can't tell what is under the ground or what you [1141] may strike by underground work, except so far as the indications may show on the surface. Of course, the deductions are based upon the surface work taken in connection with the observations that they make underground, and the whole thing is correlated and they draw their conclusions from the way those things seem to correlate.

Q. But if the underground work is not there, they don't do the underground work?

A. Then they trace out the faults, etc., and reference is made where the country is cross-sectioned, etc., by means of tunnels or anything of that kind.

(By Mr. SHACKLEFORD.)

Q. Have you made any investigation of that surface ground with reference to the limits of that belt?

A. More or less in a casual way. I have not made

(Testimony of Ed. Webster.)

any particular examination—I have noticed it in a general way.

Witness excused. [1142]

**[Testimony of Ed Webster, for Defendant
(Recalled).]**

ED WEBSTER, recalled.

(By Mr. SHACKLEFORD.)

Q. I will ask you when you first became acquainted with the Gold Creek canyon and the property in the vicinity of the Ebner property? A. In 1882.

Q. You have been up and down the creek a good deal since then? A. Not any since '98.

Q. Before that time a great deal? A. Yes, sir.

Q. I will call your attention to the picture marked "U" for identification and to a cavity underneath a place marked "C" in red ink at the side of Gold Creek canyon and ask you if you remember that cavity. A. I do.

Q. Is that a prominent object of sight as you go and come on that creek?

A. It was when I was there.

Q. That cavity can be seen at any ordinary stages?

A. Yes; you could see it at any time.

Q. From the time you first went there until the time you quit going up there?

A. Yes, sir; I have been to it different times and tried to get to the bottom of it.

Q. Does it run in?

A. It drops—there is a cavity down in it.

Q. So it doesn't show the entire cavity from the photograph? A. No.

(Testimony of Ed Webster.)

Q. Now, how does the creek appear upon that picture to you, as you recollect it, with reference to its ordinary course?

A. Well, it is about the course of the creek.

(By Judge WINN.)

Q. I will hand you this Bulletin No. 287 of the Juneau gold [1143] belt, Alaska, by Arthur C. Spencer, and will call your attention to a photograph in there, between pages 66 and 67, which says, "Cascade above Last Chance Basin, Gold Creek." I will ask you if that represents a photograph of the falls and the Ebner mill, etc.?

A. Well, I think it does.

Q. That was taken what year—does it say underneath there? A. 1900.

The photograph is admitted in evidence as Plaintiff's Exhibit "NN."

The WITNESS.—That was taken when the creek was high.

Q. Did you say about how frequently you could see that cavity there?

A. I was only to it three times and that was in the fall of the year.

Q. Was the water high or low then?

A. The water was pretty low then, when I was there.

Q. Can you observe it in this photograph in Bulletin 287—does it appear there, did you notice?

A. I can't tell it there; no.

Q. That is on account of what, do you think?

A. The water is so high there.

(Testimony of Ed Webster.)

Q. It was so high? A. Yes.

Q. I will ask you if you ever find such cavities where rocks would get in and wash out into the soft rock—just such cavities as that?

A. I would call it a pothole.

Q. What in your judgment caused it?

A. It is the fall of the water, rocks lying in a small hole and large rocks coming in it—the rocks remaining there. [1144]

(By Mr. SHACKLEFORD.)

Q. I understand you did not distinguish the hole on this picture in the plat of the geological survey. Take that picture and this exhibit “U” and see if you can establish that hole.

A. Yes, it is just at the foot, there—this is where that hole would be. The two pictures are not taken from the same place.

Q. You mean in exhibit “U” you are looking straight up the creek?

A. It is taken from that side of the creek and this is taken from a point this way.

Q. I will ask you to examine it a little more closely. Locate the slide with reference to a point marked “B” on the plat “NN”—see if you can establish that cavity on that plat NN too.

A. It is there; it would be the same place. In this picture the creek is high and in this one it is low.

Q. I will call your attention to a point off the right-hand side of the creek there to the right of defendant company and ask you if that is not the same cavity as appears in “NN” as the cavity that

(Testimony of Ed. Webster.)

appears at the point marked "C"?

A. It is the same.

Q. In both pictures? A. Yes, sir.

Q. And is visible now? A. Yes, sir.

Witness excused. [1145]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

R. A. KINZIE, recalled.

(By Mr. SHACKLEFORD.)

Q. I will ask you if after the first notice of water location, water appropriation, referred to in the defendant's answer in this case, a further notice was posted at the present intake of the dam, amended notice?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Yes, sir, there was.

Q. Do you remember when that was posted?

A. Posted on the same date as given in the notice.

Mr. SHACKLEFORD.—We offer the amended notice of location.

Same objection. Objection overruled. Plaintiff excepts.

It is admitted as Defendant's Exhibit 60. Copy attached hereto and made a part hereof.

Q. I will ask you if you have made an examination of the formation in the vicinity of the property and Snowslide Gulch for the purpose of locating what is

(Testimony of R. A. Kinzie.)

known as the Silver Bow fault and for the purpose of locating the fault of the boundary of the Juneau gold belt as it passes across the creek?

A. I have traced out parts of it but not the entire fault.

Q. Have you made any examination of Gold Creek canyon with reference to the place where the footwall, the boundary of what is known as the belt, passes through Gold Creek?

A. I have determined the footwall portion of the ore body, the ore belt; yes.

Q. Determined the portion where the ore belt runs into what is known as the greenstone footwall on the creek there?

A. That is the contact; yes, sir.

Q. I will hand you plate No. 15 of Bulletin 287, being Defendant's Exhibit 59, Bulletin 287 of the U. S. Geological Survey and [1146] ask you to examine the same and particularly the intersection of what is marked thereon as the footwall boundary of the lode system below the Ebner mill, and state to the Court if you know whether that is in proper position with reference to the creek and the other marks delineated on that exhibit?

Same objection. Objection overruled. Plaintiff excepts.

A. Yes; I should say it is.

Q. I will call your attention to a building to the southwesterly of that point marked "New Mill" and ask you what that is.

A. That is in the position of the new Ebner mill

(Testimony of R. A. Kinzie.)

and compressor plant, that is, the mill has never been completed but the compressor has—the buildings, but no machinery been put in.

Q. There is a mill building at that point?

A. Yes, sir.

Q. I will ask you also, if that map indicates in a general way the direction and position of what is known as the Silver Bow fault you described in your direct examination before and upon which Mr. Bradley has testified as to the purpose of running that tunnel?

Objected to as hearsay. Objection overruled. Plaintiff allowed an exception.

A. The fault is approximately in the same position as shown by the fault line on this map, approximately the same position as the line marked Fault on this map. It is a fault we know as the Silver Bow fault.

Q. That is the fault by which you intend to drive into the Alaska-Juneau main body? A. Yes, sir.
(By Judge WINN.)

Q. Where do you say that line is, in your judgment, upon the [1147] ground?

A. With reference to these mining claims, with Snowslide Gulch, the direction of Snowslide Gulch is identical with the Silver Bow fault, very likely what caused Snowslide Gulch—the Silver Bow fault passes up from Snowslide Gulch and goes through a little knoll, through the end of the Silver Bow mill, passes right down and comes down from Snowslide Gulch.

(Testimony of R. A. Kinzie.)

Q. I will refer you to your Exhibit 7. You have Snowslide Gulch marked on there—is that where you think Spencer intended to locate that line?

A. Yes; the fault as shown on the surface would be at a point coming down about this way, about like that—dipping in this way.

Q. You indicated the general line of Snowslide Gulch?

A. Yes, east and west—dipping to the north.

Q. Where in your judgment on the ground does that fault break off and where does it break off if the line you have indicated of this plat was about there, for the purpose, you say, it is, in reference to any of these mining claims on the ground?

A. It faults the entire ore body, what is known as the Ebner Mine—the ore body comes over and meets the fault and is thrown north into Silver Bow Basin—it throws in that direction.

Witness excused. [1148]

**[Testimony of Grover C. Winn, for Defendant
(Recalled).]**

GROVER C. WINN, recalled.

(By Mr. HELLENTHAL.)

Mr. HELLENTHAL.—We now offer in evidence a certified copy of the rules and regulations of the Harris Mining District relating to the acquisition of water rights, certified by the United States Commissioner.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial and not tending to prove any of the issues in the case.

(Testimony of Grover C. Winn.)

Objection overruled. Plaintiff allowed an exception.

It is admitted as Defendant's Exhibit 61.

Q. You are the United States Commissioner for the Juneau precinct? A. I am.

Q. And as such are also the recorder for the Juneau recording district? A. Yes, sir.

Q. And the custodian of the records of that precinct? A. Yes, sir.

Q. As such recorder and commissioner have you in your custody the records of the Harris mining district? A. I have.

Q. Back as early as '81? A. Yes.

Q. I hand you exhibit 61, which purports to be a certified copy of the rules and regulations of that district relating to the acquisition of water rights, and ask you to look at it. And I will ask you is that a copy of the records of the Harris Mining District that are in your custody as such commissioner? A. It is.

Judge WINN.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any issue in the case—there is no evidence to show they were ever followed—the last meeting seems to be in 1882. [1149]

Objection overruled. Plaintiff excepts.

Mr. HELLENTHAL.—We have here a pamphlet containing the same rules that have already been offered. The date contained on the last page of the pamphlet is 1886, and I offer the pamphlet for the purpose of showing that in the year 1886, these min-

(Testimony of Grover C. Winn.)

ing rules, the local mining customs offered in evidence, were still being published in book form under the authority of John G. Heid and George W. Garside and distributed as the rules and customs for this mining district.

Objected to. No foundation laid.

By the COURT.—Do you expect to offer proof that that was published by authority of anyone?

Mr. HELLENTHAL.—Merely that it was published by a practicing attorney.

Objection overruled. Plaintiff excepts.

The title page is admitted, with permission to substitute a copy.

Mr. HELLENTHAL.—The title page reads as follows: “Local Mining Laws of the Harris Mining District, Alaska. Published by John G. Heid and G. W. Garside, Juneau, Alaska.” On the last page of the book is contained the following: “In testimony whereof I have hereunto set my hand and official seal this the 9th day of May, 1886. John G. Heid”—printed, not in signature—“District and Mining Recorder.”

(By the COURT.)

Q. John G. Heid was a former recorder as shown by your records? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) This pamphlet, the title page of which has just been offered, contains among other things the same rules that appear on exhibit 61?

A. I will leave this so you can compare it.

Q. Did you know Judge Delaney in his lifetime?

(Testimony of Grover C. Winn.)

A. I did. [1150]

Q. What was his business here?

A. At one time District Judge and later a practicing attorney.

Q. When was he District Judge?

A. I think he retired in 1896—from '92 to '96.

Q. Prior to that time was he a practicing attorney?

A. I wouldn't be sure about that; I think he was—he was here in the district, anyway.

Q. Did you know Gamel? A. Not very well.

Q. There was such a firm of lawyers as Delaney & Gamel practicing in this town of Juneau?

A. Yes, sir.

Q. Do your records show when one W. R. Hoyt was district recorder? A. Yes, sir.

Q. What were the times between which Hoyt was recorder?

A. The first printed record I have in the office made by Hoyt as district recorder is filed for record August 11, 1890.

Q. How long did he remain as recorder according to your records?

A. The last one is made on January 16, 1894.

Q. What are his initials? A. W. R.

Q. I hand you a little pamphlet signed by W. R. Hoyt. Does that signature compare with the signatures you find in your records?

A. Yes, I think it does.

Q. It seems to be the same? A. Yes.

Mr. HELLENTHAL.—I now have a similar little

(Testimony of Grover C. Winn.)

pamphlet to the exhibit already offered as No. 61, published by authority of Delaney & Gamell, attorneys at law, Juneau, Alaska, and certified to by W. R. Hoyt, as district recorder of the Harris mining district, with the seal of the district attached to it [1151] but without any date. It is for the purpose of supplying the date I have called this witness, to determine the dates. Hoyt was recorder. I will offer the page of the cover and the certificate.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff excepts.

Admitted.

Mr. HELLENTHAL.—The title page of the pamphlet just received in evidence reads as follows: "Local Mining Laws of the Harris Mining District, Alaska. Delaney & Gamel, Attorneys at Law, Juneau, Alaska." And on the last page of the pamphlet occurs the certificate as to its authenticity, which is signed by W. R. Hoyt, district and mining recorder, as follows: "In testimony whereof I have hereunto set my hand and seal this — day of —, 1890. W. R. Hoyt, District and Mining Recorder," and attached to that is the seal of the Harris mining district.

Q. What is that seal?

A. Of the district recorder of the Harris mining district.

(It is understood that this pamphlet contains the same rules and regulations and the same material contained in Exhibit No. 61.)

(Testimony of Grover C. Winn.)

(By Judge WINN.)

Q. Do you know how long the records of what they call the Harris mining district have been in the possession of the official recorder that is, the official recorder who has occupied similar positions that you are now occupying?

A. Well, I wouldn't say offhand because I never had to trace back. I know that Hoyt conducted the trial work and justice work the same as it is at the present time. [1152]

Q. The minutes are kept in an old book down there—you have a book? A. Yes, sir.

Q. And this certified copy that you identified a while ago is taken from that old record-book?

A. Yes. That copy is from the minute-book of the Harris mining district. There were other records—there were the records of the placer locations and also of the lodes and the records of their town meetings.

Q. All the records you have of the old mining district consist of approximately what books?

A. Well, there is the placer recording book and then there is the book of deeds was kept up at that time and transfers and agreements. It was worked on about the same system as we have at the present time.

Q. Is there anything on those records themselves or anything in your office that shows when they were turned over to the United States Commissioner?

A. Not that I have ever come in contact with.

Q. I wish you would look over those old records

(Testimony of Grover C. Winn.)

and I will recall you to-morrow and see if there is anything on the minute-book or the old book of placers or the book of deeds that belong to the old Harris Mining District to indicate when they were turned over to the United States Commissioner.

A. Yes, sir.

(By Mr. SHACKLEFORD.)

We offer a deed from J. P. Corbus to the Alaska-Juneau Gold Mining Company for the Oregon lode, certified to.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception. [1153]

It is admitted as Defendant's Exhibit 62.

Mr. SHACKLEFORD.—We offer a deed from Lindsey to the Alaska Juneau Gold Mining Company, dated November 6, 1910, for the Canyon lode.

Judge WINN.—We object upon the same ground as we object to the other, and that if the location was made on the ground, it was an attempt of the same company to relocate ground which they had forfeited.

Objection overruled. Plaintiff allowed an exception. It is admitted as Defendant's Exhibit 63.

Whereupon court adjourned until to-morrow (June 8), at 10 A. M.

June 8, 1911—Morning Session.

[Testimony of L. D. Mulligan, for Defendant.]

L. D. MULLIGAN, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. SHACKLEFORD.)

Q. Where do you reside? A. Treadwell.

Q. You are the same L. D. Mulligan who posted a notice of water location on Gold Creek near the Ebner compressor plant? A. Yes, sir.

Q. When did you post that notice?

A. On August first, 1910.

Q. Did you see anybody on the ground as you went up there? A. No, sir.

Q. There was no appearance of anybody in possession of the ground between there and Snowslide Gulch on that side of the creek? A. No, sir.

Objected to as calling for a conclusion of law. Objection overruled. Plaintiff allowed an exception.
[1154]

Cross-examination.

(By Judge WINN.)

Q. How do you fix that date as being the first of August so surely?

A. That is the day I was sent up there.

Q. Had you been away from the Treadwell for some time prior to that? A. No.

Q. You were there all through June, July and August?

A. I was below in July—came back in July.

Q. Do you remember the date you got back?

A. I think the 27th of July.

(Testimony of L. D. Mulligan.)

Q. Did you come back before Bradley got here or afterwards?

A. Afterwards—he had been here and gone away before I got back.

Q. Before you got here? A. Yes, sir.

Q. When did you have that notice recorded—do you remember the date you had it recorded with Grover Winn? A. No, I do not.

Q. Who delivered that to Grover Winn for recording—did you deliver it or did you turn it over to Mr. Kinzie? A. I turned it over to Kinzie.

Q. How long after you posted it up on the creek did you turn it over to him?

A. The next morning.

Q. Of course, you don't know what date he recorded it? A. No, I do not.

(By the COURT.)

Q. How long had Mr. Bradley been gone?

A. I don't know.

Q. You are sure he was gone?

A. Yes; he was gone before I came back.

By the COURT.—What is the date of the recording of that notice?

Mr. HELLENTHAL.—August 8th.

Witness excused. [1155]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

R. A. KINZIE, Recalled.

(By Mr. SHACKLEFORD.)

Q. There has been some reference made to a statement made by you in your examination two or three

(Testimony of R. A. Kinzie.)

days ago to the effect that the rock about which there has been so much discussion on the left limit of the Borean pit was twice the size of the courtroom. I wish you would state what your recollection is about it and what you intended to state.

A. I don't remember that I attempted to describe the size of the boulder itself, but in describing the slide I think the question was asked as to the size of the pieces that would come down, and I stated that in slides of that nature pieces could come down anywhere from the size of this courtroom to twice the size of the courtroom—it wasn't my intention to say that that particular piece was that size.

(By Judge WINN.)

Q. You are sure you didn't state on the witness-stand the other day that you discovered in this pit or somewhere around it, or in the bottom of it, a piece of slide of that size?

A. No; I did not discover a piece of that size.

Q. And you didn't testify to that effect?

A. No, I did not; at least, I had no intention to testify to that effect and I don't remember I did.

Q. Where did you ever see any pieces of that size in the neighborhood of Parish #2 lode claim or on it?

A. I have never seen them on the Parish No. 2 except in describing slides of that nature, pieces of that size. I have seen them—not a great many instances.

Witness excused.

**[Recital Re Testimony of G. C. Winn, for Defendant
(Recalled).]**

G. C. WINN, recalled.

(His testimony is entirely regarding Lotta.)

With the privilege of later introducing certain photographs of the Borean Pit now being prepared and recalling Mr. Stewart to plat in the Lotta according to Ebner's testimony

Defendant rests. [1156]

. Rebuttal.

**[Testimony of John G. Heid, for Plaintiff (in
Rebuttal).]**

JOHN G. HEID, called as witness in behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. You are an attorney at law residing at Juneau?

A. Yes, sir.

Q. How long have you been practicing law in Alaska?

A. Since 1885. I came here in 1885.

Q. Who, if anyone, was occupying the position of Judge for the District Court of Alaska at that time or U. S. District Court for Alaska, perhaps it was termed?

A. The first one was Ward McAllister, Jr.

Q. Do you remember approximately the time he came here with reference to the time you arrived here?

(Testimony of John G. Heid.)

A. He came a few months before I did—he came in the fall of 1884.

Q. He was the first judge you had here, U. S. District Judge? A. Yes, sir.

Q. How long did he stay here, do you remember?

A. He went back to Cleveland—he was removed some time in the spring of 1885—he didn't stay very long.

Q. Then who followed him?

A. Judge Dawson.

Q. You were here in the days when they had some sort of a miners' organization—do you know what they called it?

A. The miners of the Harris Mining District is about all I remember they called it.

Q. I will ask you if you remember the incident of having the records of that organization turned over to the U. S. Commissioner at Juneau.

A. I know in 1886 I was elected the mining recorder—the fall of that year Judge Dawson held court here; it may have been [1157] October or November, some time in the fall, and he made an order requiring me to turn the records over to the United States Commissioner and established this as the recording district, which I did.

Q. Why was that done, do you know?

A. The statute provides that the Court has authority, in fact, directs the Court to establish recording districts and designating the commissioners as recorder, and it was under that organic act that Dawson made that ruling, and I delivered over the rec-

(Testimony of John G. Heid.)

ords to the commissioner at that time, to Judge Williams, the commissioner.

Q. Did that organization have any meetings after that that you remember?

A. It seems to me they had one meeting after that—I didn't attend it. I really don't know what the object of that meeting was, but they had one meeting, and my recollection is it was for the purpose of—

Objected to. Sustained.

WITNESS.—(Continuing.) I want to explain. At the time that Judge Dawson made this order requiring the mining recorder to turn over the records of the Harris Mining District to the commissioner who was designated as the proper recorder for this section of the recording district by the Judge, some of the miners didn't quite like it—there was some discussion—some of them got together and wanted to continue the mining recorder. The following year they held a meeting for the purpose of placing someone in nomination and came to me and wanted me to run again. I said, no, I would have nothing to do with it, as long as the Court has directed me to turn the records over to him. I told them it would be a dangerous experiment because it might raise a question as [1158] to the validity of the records by having a mining recorder and the Court having appointed a commissioner as recorder. I advised them to elect the commissioner the recorder so as to avoid all possibility of a question of legality with reference to the records, and they did.

(Testimony of John G. Heid.)

Q. Was that the last meeting you ever remember of them having here?

A. That is the only one I remember—I didn't attend any of them.

Q. What was this camp in 1884 and 5—was it a placer or quartz mining district?

A. It was a placer camp.

Q. Were there any quartz-mills in operation at all in Southeastern Alaska then?

A. At the time the Treadwell was beginning, that is all, making preparations with a view to erecting a mill there, that is about all there was and there was the old Webster mill up there,—I believe the Webster was operating the Humboldt on Gold Creek.

Q. Do you ever remember of any decision by any of those early Judges concerning the application of these miners' rules and regulations?

A. I don't remember. At that time what litigation there was, was more over the possession of mining ground. There was some litigation also with reference to the rights of water and water rights but I don't remember of having been in any of those cases. I was in one—I lost that but I don't remember much about it.

Q. Mr. Hellenthal has offered in evidence here an old pamphlet of the miners' rules and regulations that seems to have been published by John G. Heid and G. W. Garside in 1886. Look at that pamphlet and see if you remember anything about you and [1159] Garside publishing that?

A. Yes; I remember that we published that.

(Testimony of John G. Heid.)

Q. Is the year indicated on the back of the book there correct?

A. I will tell you how that happened. That is the time I certified it. In the application for patents which I had in hand then I had to file a certified copy of the rules and regulations of the district with each application and I simply gave the printer one of those copies and he set it up, and it was my mistake possibly or oversight he added also that certificate that is attached there.

Q. Do you know anything about this publication by Delaney & Gamel?

A. No, I don't know whether they copied that from this or where—evidently they got it from the record books. I don't know.

(By Mr. HELLENTHAL.)

Q. That meeting of the miners of which you spoke in 1885 and 6,—they elected the United States Commissioner as recorder, you say? A. Yes.

Q. This little book that purports on the title page to be published by yourself as one of the publishers in 1886 is just a pamphlet of the mining rules?

A. As they then existed, yes. Of course we had to file one with each application for patent and there was so much writing, we had them printed.

Q. This little book was generally circulated among miners?

A. We had quite a number of them; yes.

Q. You knew Judge Delaney? A. Yes.

Q. You knew him in 1890? A. Yes, sir.

Q. He was in partnership with Gamel and prac-

(Testimony of John G. Heid.)

ting law in Juneau? A. Yes, sir. [1160]

Q. And Delaney was afterwards United States Judge for this district? A. Yes, sir.

Q. Do you remember the time he published this little pamphlet?

A. I don't remember. I know they had one out—they did the same as we did because it took so much writing. We had no typewriters at that time and had to write them out, and for the purpose of saving time we had them published.

Q. Weren't those books of Judge Delaney circulated among the miners?

A. I suppose they were as far as I know. I have seen them around.

Q. You have seen them around and different people had them? A. Yes, I have seen them.

Witness excused.

[Recital Re Testimony of Martin George, for Plaintiff (in Rebuttal).]

(Martin George sworn. His testimony is entirely regarding the Lotta.) [1161]

[Testimony of Lloyd Winter, for Plaintiff (Recalled in Rebuttal).]

LLOYD WINTER, recalled.

(By Judge WINN.)

Q. What day was it you went up with Mr. Ebner last to take some photographs on the Ebner property, when you got these photographs I hold in my hand? A. The date is on the photograph.

Q. Tell me what date. (Handing with the photographs.) A. On the 6th of June.

(Testimony of Lloyd Winter.)

Q. On the 6th of June you went up to the Ebner property with Mr. Ebner? A. Yes, sir.

Q. Take this photograph which is marked Plaintiff's Exhibit "PP" (it is so marked). Was that taken on the date you have just mentioned?

A. That picture was made on the 6th day of June.

Q. On the ground? A. On the ground; yes.

Q. Who went with you up there that day?

A. Mr. Ebner, Mr. Mackey and some other gentleman with them. I don't recall his name.

Q. You know where the Borean pit is, don't you?

A. This is a view taken in the Borean pit.

Q. Where did you set your instrument to take that photograph with reference to the objects shown on there? A. Right in the centre of the pit.

Q. What is that large formation that seems to protrude there from the mountainside?

A. A mound of rock with some stringers in it, quartz stringers.

Q. Was this pointed out to you by Mr. Ebner as the rock that has been claimed by the defendant in this case to be a boulder? A. Yes, sir.

Q. That is the rock that shows there?

A. Yes. [1162]

Q. I wish you would show the Court whether or not this photograph shows up all the stringers of quartz that you saw upon this formation in the pit.

A. One stringer is to the left here.

By the COURT.—Mark it at each end—A at one end and A at the other.

(Witness does so.)

(Testimony of Lloyd Winter.)

Q. Describe to the Court the different stringers that are shown there and also if there are any stringers not shown describe where they are and explain why they don't show in the picture.

A. The parallel stringer on the right-hand side is in a decomposed condition, of brown and green in color, that does not come out as plain as the white or rose colored quartz on the left.

Q. How many different stringers have you marked on this photograph? A. Two.

Q. Are there any others there that are noticeable on the photograph—some smaller ones are there?

A. They are scattered—the one on the left is well defined.

Q. You examined the rock for the purpose of ascertaining about those stringers, did you not?

A. I was there at the time the examination took place.

Q. I will hand you this photograph, marked Defendant's Exhibit "QQ," and ask you who took that photograph?

A. The photograph was made the same day, the 6th day of June—it was taken up on the bench, directly above Gold Creek, and this photograph "QQ" is made looking on a direct line toward the Borean pit.

Q. "QQ" was taken down near the creek?

A. Near Gold Creek.

Q. And the one at the Borean pit and with the formation you [1163] have been testifying concerning is right on up the hill in a straight line?

A. Yes, in the same direction—the photographs

(Testimony of Lloyd Winter.)

are taken in the same line as the trend of the veins or fissures shown in the photograph.

Q. What are the objects, the permanent objects, in this photograph "QQ" you were requested to have shown in the photograph?

A. Quite a number of pieces of quartz and an open cut.

Q. Who pointed this out to you and at whose instance and request did you take the photograph?

A. By direction of Mr. Ebner and Mr. Mackey.

Q. It shows the things as they were there on the ground that day? A. Exactly so.

Q. Now, I will ask you if you noticed those pieces of quartz as shown in there to ascertain whether they had been lately excavated or had been in the condition they are on the ground there now for some time.

A. I noticed from the condition of moss as shown in the photograph on the quartz that they had been there for a number of years.

Q. Does that open cut show up in the picture there? A. It does.

Q. Can you give somewhat of a description of that open cut?

A. Oh, it has the appearance of some little workings there, of an open cut, and that quartz had been thrown to one side as it has been shown here in the photograph.

Q. Did you see any formation in this open cut similar to this piece of quartz thrown outside there?

A. It was the same character of ore, in fact, there was considerable of it along the creek—the photograph shows that. [1164]

(Testimony of Lloyd Winter.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. Which side of the Borean pit as you stand looking up the hill is that boulder on, in Exhibit "PP"?

A. I am right in the centre of the pit, varying possibly a little to the shelf on this lower side and am looking up the canyon.

Q. Up the same direction as the creek?

A. Yes.

Q. Is that the same boulder taken from a different side view, or the same piece of rock? I hand you Exhibit #9.

A. That is the same boulder and the same condition, with the exception that my photograph is taken within a few feet of that rock; that is in this picture.

Q. Your photograph was taken so as to include the rock?

A. Include the entire face of it, looking towards this way, but it is the same rock.

Q. In this "QQ," the quartz you refer to is the white quartz there? A. Yes, it is all quartz.

Q. Quartz float, is it not? A. Yes.

(By Judge WINN.)

Q. What do you mean by quartz float?

A. It would be pieces of quartz that are separated from the ledge and lying to one side—it might be within a foot, it might be within half a mile of the ledge. It would be float because it is not in place.

Q. But you saw quartz of this kind in the open cut that the photograph represents?

(Testimony of Lloyd Winter.)

A. Indications of it.

Q. How is that photograph, Defendant's Exhibit 9, taken?

A. It is taken a little lower down, while mine is taken showing the face of it, the front view. [1165]

Q. Your photograph is—

A. My photograph is a front view of that, taken directly in front of its face.

Q. (By the COURT.) Yours is looking across the pit and the other is looking up the pit?

A. Yes, sir.

(By Mr. SHACKLEFORD.)

Q. You remember a moment ago stating in answer to a question of Judge Winn that you found there quartz similar to the float mentioned in "QQ." Now, where is that—is it in the picture or somewhere that is not in the picture?

A. It is in the picture, in the open cut.

Q. Just mark it.

(Witness does so—on "QQ.")

Q. They are all marked with an "O"?

A. This is all quartz and this is more of a solid formation—that was float and this is comparatively in solid formation.

Q. It may be there in the Buried boulder or it may be in place.

A. Yes, I didn't excavate around there to find out but it had that appearance—it might be quartz. It had come from this open cut—there were some little stringers like that.

Q. And that is a slab of rock that appears in rough

(Testimony of Lloyd Winter.)

shape on the side of the hill? A. Yes, sir.

Q. As to its depth, you don't know anything about it? A. No.

(By Judge WINN.)

Q. I believe you mentioned some other place where the quartz showed up in one of these photographs. Just call it to the Court's attention, if there is any ground there besides up at the Borean pit or in this open cut—is there any surface ground that shows there in either one of the pictures?

A. To the left and along the line of "A-A" in exhibit "PP," but it is not as plain as the stringer marked "A-A" on *the* [1166] *a result* of the discoloration of the quartz. I didn't have a color screen with me. If I had a color screen, that would bring out that quartz stringer running through here.

Witness excused.

[Testimony of Wm. M. Ebner, for Plaintiff (Recalled in Rebuttal).]

WM. M. EBNER, recalled in rebuttal.

(By Judge WINN.)

Q. You just heard the testimony of Mr. Winter on the stand? A. Yes, sir.

Q. You have heard him identify this exhibit "QQ"? A. Yes, sir.

Q. I will ask you to look at that and state just what particular object you directed Mr. Winter's attention to, to have show in that picture.

A. I directed his attention that I wanted to get in this quartz that was piled out here and as much of this open cut as was possible, and this is the result.

(Testimony of William M. Ebner.)

Q. What open cut is that?

A. That was an open cut that was made there in 1901.

Q. Is that the open cut you testified concerning on either your cross or direct examination?

A. I did, in one of those; yes, sir—probably both.

Q. How far is that from the bank of the creek?

A. You can almost see the bank of the creek here. It drops right off here to the right. This quartz piled here is not over ten feet from the bank of the creek—the bank of Gold Creek—but it is steep bank there and a high bank and a long distance down to the creek.

Q. Were you there when that photograph “PP” was taken? A. Yes, sir.

Q. What prominent objects, if any, did you request Mr. Winter to [1167] have show in that picture as well as possible?

A. I wanted him to take this reef that is exposed here and show up as plain as possible the two fractures of quartz shown in the reef.

Q. With respect to the face, where did you have him set his instrument, at one side or out in front of him?

A. No; right on the trend of the formation—it would be southeast, facing northwest.

Q. I will ask you to state the relative positions of the objects that are represented in those two pictures and also with respect to Gold Creek.

A. This one is taken in the Borean pit about 300 feet from Gold Creek—this one marked “PP”; the

(Testimony of William M. Ebner.)

one marked "QQ" is taken right on the bank very close to the creek—they were taken practically in this manner.

Q. One right in line with the other, going up the creek?

A. Yes; the one marked "QQ" was taken looking southeast and the one marked "PP" was taken looking northwest.

Q. Where are those particular objects on there with respect to the Parish No. 2 lode claim?

A. The one marked "PP" is just about the discovery and the one marked "QQ" is on the centre line, I should say, about 600 feet distant from that; something like that—I will not be sure of that distance.

Q. You heard Mr. Stewart testify yesterday that he went down about this vicinity to look for the open cut and didn't see any—if he had gone down to this object, could he have seen it on the ground?

A. He certainly could because you can see it from the road.

Q. How are those two photographs, with respect to the centre of the Parish #2—are they along the centre or are they at [1168] one side of the centre of the lode line of the Parish #2?

A. Very close to the centre.

Q. Where did that quartz come from?

A. It came from this open cut. We drove this open cut in here and washed this out and found a ledge just about where it shows, about three feet from this rock here. I think it is just about three feet from there, if I remember right. It was in

(Testimony of William M. Ebner.)

this open cut, and this quartz came from the ledge, a ledge about 12 inches. I don't remember exactly.

Q. In the open cut? A. Yes.

Q. Was that rock in place? A. Yes, sir.

Q. When did you do that excavation and throw out these pieces of quartz on the side there?

A. I think it was in the fall of 1901.

Q. Is that mineral-bearing quartz?

A. Yes, sir; I only assayed for gold.

Q. Is that some of the rock you testified to Mr. Shackleford you had assayed? A. Yes.

Q. I will ask you to state briefly as to whether or not that is a bedrock or other formation from which these pieces of quartz were taken.

A. In starting close to the creek and bringing down the water there is a gulch comes down. We washed off and cleaned off starting close to the creek and went back from the creek until we found this streak of quartz or ledge of quartz and we went somewhat beyond it—

Q. Up towards the Borean pit?

A. No, up the mountain further and almost in a direction east—this open cut was almost east and west, and the further up we washed, why the heavier the debris. This was more for the purpose of ascertaining whether this ledge that shows up in [1169] Snowslide Gulch, in the Borean pit, continued through, and as soon as we ascertained that, why that is about all the work we did there.

Q. I will ask you if since you were on the witness-stand before you went upon the ground up there and

(Testimony of William M. Ebner.)

made any examination of the formation along up from the creek, about in line with the open cut that shows in this exhibit, on up towards the Borean pit? A. Yes, sir.

Q. Tell the Court what you did there.

A. About halfway between these two places I made a ditch, brought the water and we cut the roots, got down to bedrock in some places and when we got on the line, that appeared to go down on the bedrock, we found two stringers there, two fractures, the same as they show in the Borean pit, only a little closer together.

Q. Who was with you when you made this examination that you have just detailed—since you were on the witness-stand before?

A. Mr. Mackey and Mr. Graham.

Q. You heard Mr. Stewart testify that when he went up there on a certain day he saw there had been some dirt recently removed, etc. Have you been up there just before Mr. Stewart went up—in the Borean pit? A. Yes.

Q. How about these other uncoverings that you have made—had you made those before Mr. Stewart went up? I mean in regard to this open cut.

A. There has not been anything done there since 1901 or 2—I think there was some work done there in 1902. [1170]

Q. Did you do anything to alter the appearance of the ground as it was when you first testified than it was the day Stewart testified? He said he saw a lot of loose dirt that he thought had been dug up in

(Testimony of William M. Ebner.)

some places. Had you been up there before Stewart in any place and done any digging around there?

A. Yes, in the Borean pit.

Q. I will ask you if you ever went up towards Snowslide Gulch to make any investigations to see whether or not that formation continued on up to Snowslide Gulch?

A. Yes, I did. I found it in Snowslide Gulch, on the south side of Snowslide Gulch—in Snowslide Gulch, practically, and also on the north side, as far as the bedrock was concerned, I found the same dyke that cuts through there, or reef, with quartz.

Q. And it carries what sort of precious metal?

A. Gold.

Q. How was the dip of that formation and its trend, etc., up to Snowslide Gulch compared with what it is down about the Borean pit and down about where you have described that this open cut is?

A. The trend of the formation is southeast and northwest and the dip of the formation is to the northeast and varies from 50 to 60°.

Q. You heard the testimony of several of the witnesses on the part of the defendant concerning what they term a fault up there about Snowslide Gulch. I wish you would explain what you know about this, what they term a "fault."

A. There is no fault visible in Snowslide Gulch anywheres where bedrock is exposed. I have never seen any. I have never seen anyone who has examined it that ever said there [1171] was, but there is a fault on the other side of the mountain and Mr.

(Testimony of William M. Ebner.)

Spencer termed it not a "deep-seated fault."

Mr. SHACKLEFORD.—Mr. Spencer told you?

A. Yes, sir.

(Stricken out.)

Q. Were you testifying about what Mr. Spencer said from a conversation you had with him or from what you read in one of the reports?

A. Both that and also from personal observation.

(Stricken as hearsay.)

Q. Were you here when Mr. Spencer was here—when was that? A. 1904—yes, sir, I was here.

Q. And you have since read his report on that country up there? A. Yes, sir.

Q. Explain to the Court what you mean by a fault.

A. A fault is a faulting in the formation or, in other words, a break. There are two kinds of fault. There are some faults that take place that shift the formation, throw it one side, and the other—this fault, or, as they term it, the Silver Bow Basin fault,—is more in the nature of a slide of a large portion of the country; in other words, this slide or faulting took place from Icy Gulch to another gulch that I think is called Quartz Gulch, and the formation has simply taken a shift and the northwesterly end of that formation has slid down to what we call the Nowell Placer Creek; and in the tunnel driven by Lukes some years ago, he started in on the lower edge of that fault and after he had driven the tunnel in some distance, he went through the fault and the mineral belt, the vein on the Alaska-Juneau from Quartz Gulch southeast is down the hill and does not

(Testimony of William M. Ebner.)

jibe with that up the hill or the continuation from the Ebner to the Alaska-Juneau. [1172]

Q. Mr. Kinzie described something about the fault down here close to Snowslide Gulch, which he claims was represented on one of those plates taken from this Geological Report of Spencer—you heard Mr. Kinzie's testimony on that? A. Yes, sir.

Q. You also saw that exhibit he was testifying from? A. Yes, sir.

Q. Explain to the Court what you know about that.

A. That only comes part way. It doesn't come over to Snowslide Gulch. It is not so represented in Spencer's report.

Q. Does it come down on any of your property?

A. No.

Q. That is on the Ebner Gold Mining Company property? A. No, it does not.

Q. You heard Mr. Stewart's testimony yesterday afternoon about making some excavations, etc., in the Borean Pit? A. Yes.

Q. I will ask you if you made a trip up there since Stewart did this work he testified concerning?

A. Yes, sir.

Q. When did you go up there?

A. I went up early this morning.

Q. Who went with you?

A. Mackey and Graham.

Q. Did you go up to the Borean pit where this excavation and blasting was done by Stewart?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. I wish you would explain to the Court just what changes, if any, have been made in the surroundings there from what they were when your testimony was given before.

A. Why, this reef that is shown here in this picture "PP," looking in a northwesterly direction, it only shows the face of it and does not go down quite low enough to show all of it. [1173]

(Witness is handed Defendant's Exhibit 9 and Plaintiff's "PP.")

WITNESS.—(Continuing.) This picture here shows the face of this and is taken along the trend to the northwest and dipping to the northeast. This particular reef, as far as you can tell, has exposed dips on an angle of about 50° , and we will say that is the trend and this is the face (indicating)—something like that. Stewart went to work and dug a pit on the southwest side of it, down by the side, about 2 feet wide and about three or three and one-half feet long, until he reached down to the disintegrated greenstone footwall, and then he seemed to have stopped right there, and that is probably where he got his samples—according to his testimony that is where he got his samples. Now, if he had carried his excavations four to six inches, not to exceed 6 inches further to the east, he would have broken into the footwall proper—in other words, he would have broken into the reef itself.

Q. When you say reef you mean that formation there that they call a boulder?

A. They called it metagabbro. I call it a reef. It

(Testimony of William M. Ebner.)

is an intrusive diorite dyke altered to a brown diorite dyke.

Q. I understand you to say that if Mr. Stewart had just done a little excavation to one side, he would have gone down and struck this same formation they call the boulder there? A. Yes, sir.

Q. In other words, he would have crossed the line of contact between the greenstone and the diorite?

A. Yes, he went down just to one side, just so he stuck to the side of it, under the lea or under the dip of this reef, but if he had gone a little further he would have gotten [1174] into the diorite, in the solid—it is all somewhat decomposed just at that particular place, but the bedrock of this diorite being harder than the greenstone sticks up in the pit in front of the main reef or in front of what they call the boulder. If he had gone as far as those he would have got across the contact and then his samples, if he had taken them deep enough, taken his greenstone—I don't know what he had; he could have gotten the greenstone which is in the contact and the diorite itself—which is the mineral-bearing rock.

Q. You took those parties up there and did a little digging yourself this morning and found out the facts you have just testified concerning?

A. Yes, sir.

Q. Did you go down in this hole that Stewart sunk there, which he said came up to about the top of his head—did you go down in that? A. Yes, sir.

Q. And what did you find on the bottom of it?

A. We found a disintegrated greenstone in the

(Testimony of William M. Ebner.)

bottom—there had been some cave-in of some of the drift material and we got some out of the bottom of that and then we excavated further to the east and got to the contact and got a piece of the hard diorite itself.

Q. I wish you would take those two packages of rock and state to the Court just from what places they came with reference to the testimony you have just been giving—the pieces that show up some quartz.

A. This greenstone—this is an excavation we made this morning—this is right close to the contact, right at the contact. (It [1175] is marked “RR.”) This piece is on the contact too, belong to the diorite.

Q. Is this piece what is known and recognized up there as the rock that carries value, any value?

A. Yes, sir.

Q. Is this piece of rock just the way it appears or is this somewhat decomposed?

A. That is somewhat decomposed—that is right close to the contact—that is about the width of it. (The piece is marked “SS.”) This piece is just a little further in, going into the decomposed diorite—it is a piece of solid diorite.

Q. That is the mineral-bearing rock up there?

A. Yes, sir. (It is marked “TT.”) Now, this piece is part of the same reef only about seven or eight feet higher up, on the same rock.

Q. You mean that formation that protrudes out into the Borean pit?

A. Yes, sir. (It is marked “UU.”)

(Testimony of William M. Ebner.)

Q. Just select some pieces you have taken of the quartz that you have been testifying concerning along up the line of your discovery on the Parish #2 lode claim.

A. This is from the face of the reef; this is from the left-hand fracture or stringer and these are from the right-hand fracture; these rocks here are between and on each side.

Q. When you refer to the reef, I understand you refer to the formation that these other people have been calling a boulder? A. Yes, sir.

(The rocks referred to in the last answer are marked "VV.")

Q. Where did you get that piece of rock you have in your hand?

A. I got this between 6 and 700 feet distant on the trend going from the Borean pit in a southeasterly direction, on the [1176] south side of Snowslide Gulch and belonging to this same reef.

Q. And about how far from the Borean pit?

A. About 600 feet—between 6 and 700 feet on the trend.

Q. What kind of rock is that?

A. That is a diorite.

Q. Does it carry values in gold and silver in this property? A. It does. (It is marked "WW.")

Judge WINN.—I want to offer in evidence exhibits "PP" and "QQ."

They are received.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. The rock exhibited in photograph "PP" is the

(Testimony of William M. Ebner.)

rock under which Mr. Stewart is excavating?

A. Yes, sir.

Q. And that is the rock upon which you claim to have made your original discovery?

A. Yes, that is one of them—that is where I made my first discovery.

Q. In 1899? A. Yes, sir.

Q. So that your original discovery as described in your location notice is not correct?

A. I don't know.

Q. Have you examined your location notice?

A. I have not.

Q. How far above the level of Gold Creek is the spot represented in exhibit "QQ"?

A. I should estimate that it was between 80 and 100 feet.

Q. In height?

A. In height—that is the bank slopes off quite perpendicularly and this is up on the bank.

Q. So if you testified it was in the canyon last Saturday [1177] night, about 20 feet below the lower tunnel, you were mistaken in that respect?

A. I don't think I testified that. If I said canyon I meant from mountain to mountain. I didn't mean the narrow canyon of the creek.

Q. You mean it was more than 20 feet away from that tunnel—a good deal more than 20 feet?

A. Yes; I think I said about 20 feet to the south or southeast and then up on the bank in the open cut.

Q. The rocks in the foreground are flat, the white rocks?

(Testimony of William M. Ebner.)

A. They are rocks that were taken out of the pit here, broken off the ledge, that are in place in the rock there.

Q. You know as a matter of fact that that rock shows to the extreme left of that picture as coming out from under the surface?

A. Not this rock—that is not the rock.

Q. Where is the rock that is in place?

A. It can't be shown—this has not been disturbed; it is right in along here.

Q. It is under that rock?

A. No, this is slide; the water has brought in a lot of rock and slide and gravel there.

Q. The picture doesn't exhibit a rock in place?

A. No, it might exhibit some of the quartz—I wouldn't be sure about that.

Q. And what is the character of that rock?

A. That is a white quartz, carrying pyrites.

Q. What does it contain?

A. I have assayed it and it contains gold.

Q. What are the walls of the white quartz there?

A. Diorite. [1178]

Q. On both sides?

A. I think so—I think in both sides.

Q. You are in schist there? A. No.

Q. Is there any diorite on the creek below that?

A. I think there is. I wouldn't be certain about that but I think it shows in the creek.

Q. The quartz shows in the creek?

A. That I wouldn't say. That is a very steep place where that comes down—I think it does,

(Testimony of William M. Ebner.)

though. I wouldn't be certain about that.

Q. And in your opinion that is part of the same ledge that runs through the rock that we claim is a boulder in the Borean pit?

A. It is in line with the Borean pit and the rock showing there and also the discovery between this and the Borean pit.

Q. There is no discovery between this and the Borean pit? A. Yes, sir.

Q. Did you testify about that last Saturday morning or Saturday night when I asked you to name all your discoveries? A. I think I did.

Q. Now, you want the Court to understand that the rock in the Borean pit of which you have introduced a photograph this morning is rock in place?

A. Yes, sir.

Q. And you also want the Court to understand that the fault line does not run through Snowslide Gulch? A. Yes, sir.

Q. I will hand you Plaintiff's Exhibit 59 and ask you if it is not so indicated thereon.

A. No, sir; it does not come down Snowslide Gulch; it stops on [1179] top of the mountain—this black line is the turn of the fault and here is the end of the fault; those two are the summit there and it stops right there; that little stream marked there is supposed to be Snowslide Gulch.

Q. And if you follow up Snowslide Gulch you strike the fault line?

A. If you go way up on top of the high mountain and going down on the other side, then you strike the

(Testimony of William M. Ebner.)

fault or saddle.

Q. The top of Snowslide Gulch is not the mountain? A. No.

Q. It is usually considered by geologists as an indication of a fault—the saddle?

A. Not necessarily.

Q. That is one of the known indications of the fault—a saddle in the rise?

A. No, a saddle in the rise may occur from a softer formation.

Q. It is one of the known indications of faulting?

A. It might be.

Q. It is so considered, is it not?

A. Not altogether; no, sir.

Q. It is the badge of faulting, a geological badge of faulting, a saddle and summit?

A. Not always; no, sir.

Q. It is one of the indications?

A. Yes, sir; it is one of the indications.

Q. I want you to locate the place where you found the rock exhibited in “QQ” with reference to a line drawn across Gold Creek marked footwall boundary of lode system.

A. This is approximate. It is on a very small scale—I will mark it “D”—that is approximate; it is between the two gulches there. [1180]

Q. That is to the south of the footwall boundary of the lode system? Of the Juneau gold belt lode system?

A. It is as marked on that—that is the principal lode system of the Juneau lode belt; it lies to the

(Testimony of William M. Ebner.)

southwest of it.

Q. I now call your attention to a plate marked Bulletin 287, Plate 9, and ask you if the faulting of the Juneau gold belt and the system of mills there do not correspond with the same as shown on exhibit 59. I will have this plate marked exhibit 66. (It is so marked.)

A. Yes, they correspond very close.

Q. In a general way, that shows correctly?

A. In a general way, it does; yes.

Q. Where do your schists appear in Gold Creek?

A. There are schists found from Granite Creek down to Snowslide Gulch and Gastineau Channel.

Q. I am talking of the cross-section of Gold Creek through that belt, with reference to the position of your compressor plant or what is sometimes called the New Mill on the Lotta, as claimed by you?

A. On the Lotta we have schists above the new compressor building and below and a diorite belt between.

Q. Where does the schist commence?

A. I think it commences close up to the head of the steps that go up. It is probably on the northeast side line of the Lotta—I think that is about where it commences. It is a narrow belt of schist there, and then here is a belt of diorite interspersed with quartz veins.

Q. Northeast side line of the Lotta?

A. Yes, along about that place.

Recess to 1:30. [1181]

(Testimony of William M. Ebner.)

Afternoon Session.

Continuation of the cross-examination of Mr. EBNER by Mr. SHACKLEFORD.

Q. I am going to read to you a statement with reference to the Silver Bow Fault, page 71 of the Bulletin by Mr. Spencer, on the Juneau gold belt, 1906. "The difference in the bedrock formations on the two sides of Quartz Gulch is the result of the transverse fault running approximately N. 72° E. from the saddle between Snowslide and Quartz Gulches and following the general course of the latter stream. The precise direction of the movement upon this fault, whether vertical or inclined, has not been made out, but the horizontal displacement of the slate band which has been indicated on the map would result if the southeastern block were either uplifted or thrust toward the northeast, the direction of hade is not known, but the inclination of the fault surface is supposed to be toward the northerly or downthrown block. The failure to trace the fault toward the west, though possibly chargeable to the lack of exposures, suggests this interpretation, since this structure would carry the line of the break down Snowslide Gulch." Now, is that statement a correct statement of the situation as developed upon the ground here with reference to the faulting known as the Silver Bow fault?

A. It is. Now, what portion of the saddle does he refer to? That saddle is about half a mile long—almost level.

Q. He refers to the map, and I call your attention

(Testimony of William M. Ebner.)

to the fact that the throw of the fault comes a considerable distance down above the upper ridges of Snowslide Gulch as indicated on that map.

A. That is very true, but Snowslide Gulch heads way upon the [1182] saddle, nearly half a mile from the southwestern end of the saddle, at the head of Snowslide Gulch and the fault only comes to the top. This is a little different map than the one you had this morning and does not show it quite so plain. The other shows that it only comes about to the centre of the ridge.

Q. It comes beyond the centre of the ridge because the drainage there for a considerable distance is into the Snowslide drainage area, is it not?

A. Yes, to a certain extent it is, but the saddle is over half a mile long.

Q. (By the COURT.) You mean along the ridge or over the ridge? A. Over the ridge.

Q. There is an apex to that saddle, as indicated by the drainage areas? A. There is, yes, sir.

Q. And it follows over that apex and down on this side,—beyond the apex of the saddle?

A. It follows a portion of the saddle, about the centre of the saddle, probably, is about the highest point and it slopes very gradually toward Snowslide Gulch—the other portion slopes the other way—what we call Snowslide Gulch is that portion which is very steep, not the saddle.

Q. The maps and the statement of Mr. Spencer in the report are, generally speaking, correct, are they not? A. Yes.

(Testimony of William M. Ebner.)

Q. And they are, generally speaking, correct with reference to the location of the fault?

A. Yes, sir.

Q. I will hand you Plate #19 (Nineteen) of Bulletin 287 and ask you whether that represents a fault or a slide?

A. That represents a slide.

Q. Where did you get those pieces of rock—marked “WW”? [1183]

A. That comes from the south side of Snowslide Gulch.

Q. How far from the Borean Pit?

A. Between six and seven hundred feet.

Q. When did you get that?

A. I got that Monday evening.

Q. How many inches did you say, if Mr. Stewart had gone over in his tunnel, he would have struck the roots of the boulder exposed in your exhibit “PP”? A. Not more than four inches.

Q. When you went up there, did you go that far?

A. Yes, sir.

Q. You went under it? A. Yes, sir.

Q. You found the roots of that boulder?

A. Not the roots of the boulder—there is no boulder there.

Q. The roots of the rock we claim is a boulder?

A. We saw where the rock goes down out of sight. I don't know where the roots of it is.

Q. Your claim is it is an intrusive diorite?

A. Yes, sir.

Q. And not slide matter at all? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. And that you had gone up there and found—had gone about four inches and found where it had gone out of sight?

A. We found the contact between the greenstone and the diorite.

Q. What about the boulder, did you trace it down—the rock claimed to be a boulder?

A. No; when we found the contact, we didn't go down any further.

Q. That part of the contact, this marked "RR"?

A. That is close to the contact—it is a greenstone or schist.

Q. It took that form of rock in place?

A. Yes, sir.

Q. That is not float? A. No, sir. [1184]

Q. It doesn't show any indications on its edges or otherwise of having been float?

A. Not to me it don't; no, sir.

Q. I will now hand you exhibit No. 55 and ask you if that was found underneath the rock we claim is a boulder—how do you explain its presence under there, tightly imbedded under the rock?

A. I don't know where it was found except what Mr. Stewart testified to, and if it was found in his excavation that he made, it was found under the dip of the boulder, what you call a boulder, but under the roof—

Q. The roof has a dip of 50°?

A. Yes, about 50°, and this was under the overhanging portion of this roof and was probably brought there by the glacier—that is a glacier de-

(Testimony of William M. Ebner.)

posit and it is a piece of micaceous gravel, pretty well decomposed.

Q. Do you know any place south of the line, known as, indicated on that map as the footwall boundary, whether there is any other intrusive diorite through that schist belt there? I mean down the creek from there. A. Yes, sir.

Q. Which way does that boulder dip? I mean the rock in dispute. A. It dips to the northeast.
(By Judge WINN.)

Q. I will ask you whether or not you have in your possession any copy of the option which you gave to Mr. Underwood? A. I have not.

Q. Did you ever have a signed copy, that is, a duplicate or triplicate original of the paper itself?

A. No, sir. [1185]

Q. Have you in your possession now or in California a copy of the option in any form or shape?

A. No, sir.

Q. Who, if anyone, took the originals or original—who took them?

A. The original, which was supposed to be mine, was deposited, together with all my papers, with the Van Orton Trust Co., and I had a copy, an unsigned copy, and about eight months or so ago I sent them to my attorney, Mr. Cox of New York.

Q. Now, what was this option upon—what did it propose to sell?

Objected to as incompetent, irrelevant and immaterial.

Judge WINN.—On the 15th day of May I sent

(Testimony of William M. Ebner.)

George E. Bent this telegram: "Come immediately; must have papers connected with Ebner deal. Answer." On the 18th I had received no answer and sent the following telegram: "George E. Bent, 60 Broadway, New York. Wire me whether option and other papers requested are forwarded"; and in answer to that, on the 22d, I have this telegram from Mr. Middleton, who is in the office there: "Bent away; am mailing to-day all Ebner papers requested." I have sent for these papers and if they come before the argument closes I will introduce them. We have no other copies.

Objection overruled. Defendant allowed an exception.

A. I gave Mr. Underwood an option on 60,930 shares of the Ebner Gold Mining Co. stock belonging to me.

Q. Is that the only contract you have had with anyone connected with your stock? A. Yes.

Q. That is any outstanding contract?

A. That is the only contract.

Q. Were these shares of stock of yours put in escrow? A. Yes, sir. [1186]

Q. And never been delivered yet, have they?

A. No, sir.

Q. There has been no transfer on the company books of this matter at all? A. No, sir.

Q. Of any shares? A. No.

Q. I believe, as you have testified to Mr. Shackelford, you have never been paid for your shares of stock? A. Not in full.

(Testimony of William M. Ebner.)

Q. You heard the testimony of several of the witnesses here who were purporting to testify to what they called a custom about crossing an unpatented property with water. Do you know whether or not any such custom has been prevailing here as a general custom since you have been here, in the mining business? A. No, sir.

Q. What do you mean—it is not?

A. I mean by that, that I don't know of a single instance where one party who desired to cross the property of another did it without the consent of the party owning the property—I don't know of a single one. I know of some instances where they went so far as to get into litigation, I think, but as a rule most all of them compromised in some way. (By Mr. HELLENTHAL.)

Q. You don't know of a single instance where ditches have been built across the mining claims of others?

A. Oh, yes, I know where they have been.

Q. Do you know of any instance where they have been built without asking anybody's consent about it? A. I don't know of one—not any.

Q. You don't know about the building of the Treadwell ditches [1187] or any of those ditches?

A. I don't know anything about those.

Q. Whose consent did you ask to build the ditch across the Royal that you did the assessment work with in the Borean pit?

A. That ditch was built by the early placer miners and the dam was built by the placer miners, long before I came here.

(Testimony of William M. Ebner.)

Q. Water was used in the Borean pit?

A. When I made the locations there I rebuilt the dam and rebuilt the ditch, where it had washed out, and used the same ditch and dam that was built there in the beginning.

Q. Whom did the Royal claim belong to at the time you did all this? There is a dam on the Royal, is there not?

A. No, the dam is on the Parish No. 1.

Q. Can you locate that dam on this plat #7?

A. I can do it this way, by following up the continuation of the Lotta southwest side line, following up the Royal side line. The dam is below that side line.

Q. Can you locate the dam of exhibit 7?

A. Not exactly; no.

Q. Approximately?

A. It is just a little distance, a very short distance below that side line.

Q. Can you locate it approximately on the map?

A. I can approximately—providing you have the right map.

Judge WINN.—We object to that—this map has a lot of lines on it that are in dispute.

Objection overruled. Plaintiff allowed an exception.

The WITNESS.—Is this the Lotta side line as Judge Winn claims it?

Q. Yes.

A. You follow right up along here—this is Snow-slide Gulch? [1188]

A. Well, the dam is just below that and the ditch

(Testimony of William M. Ebner.)

comes around this way and follows around the bluff like this and then comes down like that.

Q. Then that is an old ditch the miners built?

A. Yes, sir, an old ditch.

Q. All you did was to merely clean the ditch out?

A. We had to rebuild a good portion of it and the side and some places where it broke through, where it had been taken away.

Q. That is all you did? A. Yes, sir.

Q. When did you build the Ebner ditch—was that built when you came there—the Ebner ditch that runs from the Ebner dam, the main dam, to the Ebner mill—the flume?

A. That was built when I came here.

Q. Across the Humboldt property?

A. Yes, sir.

Q. Did you ever find in the title papers of the Ebner property that you had any right of way or privilege from the Humboldt Company to cross that ground?

A. Well, I suppose there was a privilege.

Q. Did you find any such thing as that?

A. I found a declaration filed by Mr. Coulter for a right of way just where the flume is now.

Q. Did you ever find any right of way from the Humboldt Company to your company, to Coulter or anybody else, or leave to build the flume under that declaration? A. Outside of that; no, sir.

Q. It nevertheless crossed the property of the Humboldt Company?

A. It does; a small portion of it.

Q. That is the same property that was patented at

(Testimony of William M. Ebner.)

the time Garside made the survey for patent of the Lotta and those claims? [1189]

A. The Humboldt was patented long before that—several years.

Q. Do you know where the California & Nevada Copper Company are now attempting to build a flume, where they are taking out the water now and conducting it down to the Cape Horn?

A. I know where they have a flume built, a flume-line.

Q. That also crosses the Humboldt property?

A. Yes, sir.

Q. It also crosses the Dora group? A. Yes, sir.

Q. Does any one of these properties belong to the California & Nevada Company, except the Humboldt which was acquired after the ditch was built?

A. I don't know when it was acquired but I understand they own it.

Q. But they didn't own it at the time that this ditch was built, at the time that this flume was projected—you know that? A. No, I don't know it.

Q. You are also the president of the Dora Gold Mining Company? A. Yes, sir.

Q. Did you ever give Mr. Mackey or Mr. Bent or anybody connected with the California & Nevada Copper Company any consent to cross the Dora group?

A. Yes, sir; gave them a verbal consent.

Q. When? A. Last summer.

Q. Who was present?

A. I gave it to Mr. Bent when I saw him in Seattle

(Testimony of William M. Ebner.)

—I don't know who was present—a verbal consent.

Q. When was that? A. Some time in July.

Q. You are sure of that? A. Yes, I know it.

Q. There was nobody present but you and Bent?

[1190] A. That is all, I think.

Q. Was that reduced to writing at any time?

A. No, sir.

Q. Never been reduced to writing? A. No.

Q. Did Mr. Bent ask you for a consent?

A. I think he did—that is, he had told me about this projected flume to cross the Dora.

Q. Where were you when this thing was discussed with Mr. Bent? A. At the Lincoln Hotel, Seattle.

Q. In what room?

A. I don't remember the number of the room.

Q. And don't know who was present? A. No.

Q. Mr. Bent is not here at the present time?

A. No.

Q. You don't know where he is? A. I do not.

Q. You know, however, that no written consent, written right of way, was ever given to the California & Nevada Copper Co. to construct that flume?

A. No.

Q. You know that? A. Yes, sir.

Q. Were you in Seattle in July of last year?

A. Yes, sir.

Q. What other instances do you know of where anybody ever gave or asked for consent to build a ditch across anybody's mining ground, unpatented, —a mining ditch to be used in connection with mining operations?

(Testimony of William M. Ebner.)

A. I don't know that there is any difference between unpatented and patented.

Q. Where they either asked or received permission to build a ditch across unpatented mining ground where the water was used for mining purposes? I am not asking about patented ground.

A. I don't remember of any particular case.
[1191]

Q. You don't remember any particular case?

A. No, the Last Chance went on there without any permission and built their grade and then came and asked permission. That was on the Lotta—also on the Cape Horn claim.

Q. Whom does the Cape Horn claim belong to?

A. It belongs to myself and a man named Wilson, and at that time I don't remember whether Mr. Revard and Mr. Zimmerly had any interest or not. I think they did.

Q. Did Wilson consent? A. No, sir.

Q. He was still a part owner in the Cape Horn?

A. He was.

Q. Is he still? A. No.

Q. When did Wilson cease to be an owner in the Cape Horn? A. I think in 1902.

Q. Did he convey his title to you? A. Yes, sir.

Q. In writing? A. Yes, sir.

Q. The Hile people or Jualpa people built a flume across the Lotta and partly on the Cape Horn and then came to you and asked consent and paid you \$10,000—ain't that true?

A. No, they didn't pay \$10,000—\$8,000.

(Testimony of William M. Ebner.)

Q. How much of that was to cross the Lotta?

A. Their dam was on the Lotta and I don't remember the distance they crossed the Lotta. They dug a tunnel across the Lotta—they dug a portion of the tunnel for the intake at the dam.

Q. Now, those Hile people were drygoods clerks, were they not—you know that? A. No.

Q. How long had the Hile people been in this country when you had that deal with them?

A. Mr. Will Hile had been here for several years—had been mining around the country—at least three years. He had a property [1192] here that was paying dividends, that they were paying dividends on. I don't know where it was.

Q. Will Hile was the man you dealt with?

A. No; the gentlemen with whom we finally dealt with was the full board of directors. I think they were here, a man named Ritter, their attorney, and myself and Wilson. Ritter was from Philadelphia.

Q. And the board of directors was from Philadelphia?

A. I think most of them were; yes, sir.

Q. They were up here to look over their property and you finally made a settlement with them to pay you \$8,000 to take that water across there and start their workings? A. Yes, sir.

Q. How much of that did you credit to the Cape Horn and how much to the Ebner?

A. The Ebner Gold Mining Company got a credit of \$5,000 and the Cape Horn interest \$3,000.

Q. The Cape Horn belonged to you personally?

(Testimony of William M. Ebner.)

A. Myself and copartners.

Q. And the balance to the company?

A. And the Lotta to the Ebner Gold Mining Company.

Q. There wasn't any suit about it, any litigation?

A. No, there wasn't any suit.

Q. You never sued them and they never sued you?

A. No.

Q. How long had you been in this country at that time?

A. I had been here several years—six or seven years.

Q. Where did you come from to this country?

A. I came from Wisconsin, from Milwaukee.

Q. What was your business there?

A. I was in the mercantile business. [1193]

Q. You had been here six or seven years and Hile had been here about three years? A. Yes, sir.

Q. You became interested in the Ebner Gold Mining Co. and Hile was connected with the Jualpa placer property? A. Yes, sir.

Q. Could this property be worked, the Jualpa property, unless the water was taken approximately at that point—where this water was taken out?

A. Yes, sir.

Objected to as immaterial. Sustained.

Q. Is it not a fact that these Hiles were up here with their board of directors—it was delaying their work and they were willing to concede almost anything you might claim, at the time you got that money?

(Testimony of William M. Ebner.)

A. No; they had the flume built We agreed on a partial settlement and I let them go on, with the understanding that when their board of directors came here, we would thrash the matter out, make a full settlement and agree upon terms, an absolute amount.

Q. The water was taken off of the patented Lotta, however? A. Yes, sir.

Q. Is it not a fact that Mr. Donohue was your attorney at that time? A. I don't remember.

Q. Anyhow, that is the only case you know of where the mining ditch was run across unpatented mining ground where there was any dispute about it? A. I don't remember any other now.

Q. That is all you know about the custom of miners in that connection—you don't know anything about the Treadwell ditches [1194] or the Berner's Bay ditches or any of those ditches?

A. I don't know anything about the Treadwell ditches or anything about any ditches except those in the vicinity of Juneau and Silver Bow Basin—and my own ditches.

Q. You don't know anything about the custom outside of that?

A. I knew the custom before civil law was established, before the statute was extended in 1884. I knew that then the miners' rules and regulations governed, but after that, my understanding has always been, after the courts were established here and the statute extended, that those were absolute.

Q. Your understanding was that prior to 1884 you

(Testimony of William M. Ebner.)

could cross the ground with a ditch but you couldn't do it unless—

A. No, not that way. Before 1884, before civil law was established, you could cross but would be governed by those miners' rules.

Q. Under the miners' rules?

A. Yes, whatever they were.

Q. But since 1884 the right is taken away by federal statute?

A. That is my understanding—there is a statute for that.

Q. You don't know anything further about it, except what you have testified to? A. No.

Q. Those are the only ditches you know of?

A. That is all I can remember now.

Witness excused. [1195]

**[Testimony of Angus Mackey, for Plaintiff
(Recalled in Rebuttal).]**

ANGUS MACKEY, recalled in rebuttal.

(By Judge WINN.)

Judge WINN.—At this time I desire to renew my offer of the contract that was executed by the Alaska-Juneau Gold Mining Company with the Jualpa Company, promising and agreeing to convey certain portions of the Idaho and Colorado claims that lie in the creek-bed above the Jualapa Company dam.

Objected to. Objection sustained. Plaintiff excepts.

Q. I will ask you if you heard Mr. Ebner's testimony about going on this ground on the 6th day of June, the day the photographs were taken by Lloyd

(Testimony of Angus Mackey.)

Winter—did you go up on that trip? A. I did.

Q. How long have you been engaged in construction, etc., connected with mines and mining operations? A. Between 25 and 30 years.

Q. At what points?

A. In construction of mills, etc., in Montana, Colorado, Idaho, New Mexico.

Q. I believe you testified to having furnished the plans, etc., and assisted in the construction of the Treadwell mills?

A. I was at the Treadwell mills; yes.

Q. Now, in your various experiences around mining claims and building structures of this kind, have you had some occasion to examine into the formation and bedrock and things of that kind? A. I have.

Q. You don't pretend to be an expert at that?

A. Not at all.

Q. Were you on this property when Lloyd Winter took those photographs that were offered in evidence this morning? A. On the 6th? Yes.

Q. I wish you would tell the Court just what Mr. Ebner did up [1196] there that day and tell what you struck there in the way of bedrock, etc.?

A. First, we had Mr. Winter take a photograph of a pile of ore that was down on the bank, that is right near the steep bank that leads down to Gold Creek.

Q. That is the picture that was offered in evidence this morning that shows quartz lying on the ground?

A. Yes, it shows quartz lying on the ground.

Q. Then, you were there when that was taken?

(Testimony of Angus Mackey.)

A. Yes.

Q. I will ask you if you saw anything in the way of any open cut or any work that had been done there.

A. Yes, there was an open cut there—there had not been work done on it lately.

Q. I will ask you if you saw those pieces of quartz that were lying on the side of this open cut when you were there? A. I did.

Q. Did you examine this open cut to see whether there was any similar formation in the cut to those rocks that were lying on the side of it there?

A. We could see the quartz there.

Q. How did it look compared with the quartz that was on the side, thrown up in those pieces?

A. About the same quartz—the same kind.

Q. What else did you do there that day?

A. And we went over to that pit or cut—**Borean**, I believe, they call it—and Mr. Winter took a photograph of a reef that is there—that was one of the photographs offered in evidence.

Q. Last Sunday were you up there?

A. Yes, sir.

Q. Did you do any other uncovering of the ground there or removing [1197] of any earth?

A. Yes; in company with Mr. Ebner I took up those men and we uncovered bedrock in about three places.

Q. Where was this bedrock that you uncovered with respect to this open cut that Lloyd Winter took a picture of, at the side of which there was some

(Testimony of Angus Mackey.)

quartz in the Borean pit? Describe it relatively.

A. The first cut we made to strike bedrock was about 140 feet from where the bank pitches off steep down to the creek, and we uncovered bedrock there for several feet and we went further up and uncovered another place there.

Q. Which way did you go up with respect to the Borean pit?

A. Probably about the center of the pit—the center line about.

Q. Did you go from this place near the brow of the hill that leads down to the creek? You say you made an uncovering there. Did you make any other uncovering before you got to the Borean pit?

A. Yes; that was in the pit, in the center of the pit—it *really* not the pit; it is a cut.

Q. What did you do there?

A. We uncovered bedrock there for some twenty-odd feet.

Q. Did you go to that place in the Borean pit, what we claim—where this outcropping that we claim is of quartz and what the other side claim is a boulder is? A. Yes, sir.

Q. What did you do there, if anything?

A. Well, we sank a small pit there and we showed bedrock there to satisfy ourselves that the rock was in place, that the reef was in place.

Q. Were you up there with Mr. Ebner this morning? [1198] A. Yes, sir.

Q. Describe what you did there in this Borean pit this morning.

(Testimony of Angus Mackey.)

A. We went up there and saw where somebody had sunk a pit down there in front of the bluff—the bluff stands up in front of it. The photograph was taken where it shows these two fractures or quartz veins—they are quartz veins.

Q. I hand you Plaintiff's Exhibit "PP." Can you describe approximately on that picture where you found this pit dug there?

A. Yes, the pit was on this side. Looking at the bottom of this corner here it showed loose ground around there, that extended that long (indicating).

Q. Was this pit that had been dug there dug to where the rock projected out into the pit somewhat or how about that?

A. Yes, there was another piece of rock coming up through—I think it was rock in place.

Q. Did you ascertain from the surroundings whether there had been any blasts fired or not?

A. No, we couldn't see.

Q. What did you do to ascertain whether or not that vein continued on down into the ground or not?

A. Instead of following it the way they done, we dug along the trend of the country there—we dug down to where this solid formation was.

Q. How far about was that from the pit that Stewart examined?

A. It just extended the other way with the trend.

Q. How far from that did you find rock in place from the pit?

A. It was only a few inches where we dug down.

(By Mr. SHACKLEFORD.) [1199]

Q. In toward the face of that boulder and at the

(Testimony of Angus Mackey.)

end of the cut, there is a hole sunk, is there not?

A. No, it is on the front here; it shows on this photograph like this corner—it comes around the corner this way.

Q. It wouldn't show in this picture, because the picture don't take enough of the rock?

A. No; it is underneath the lower part of "PP"—it shows almost identical with those quartz seams on the trend.

Q. Did you go down into that cut and the pit underneath there where the work had been done?

A. Yes, we had men working there.

Q. As you cut into that, I understand you displaced some rock and dirt and found quartz in place in underneath the boulder.

A. I didn't say quartz in place.

Q. Rock in place? A. Yes, rock in place.

Q. Was it on your left hand as you stand facing in that cut or on your right hand?

A. On your left hand.

Q. I will now show you this Exhibit 68 and ask you to take your pencil and mark on that picture the rock which you found in place.

Judge WINN.—We object to this. The photograph has not been identified.

Mr. SHACKLEFORD.—I will ask permission to call Mr. Pond.

Witness withdrawn.

[Testimony of Percy Pond, for Plaintiff (Recalled in Rebuttal).]

PERCY POND, recalled.

(By Mr. SHACKLEFORD.)

Q. I hand you an exhibit marked No. 68 and ask you who took that? A. I made the photograph.

Q. When was it taken? A. To-day.

Q. Is it in the Borean pit? [1200]

A. I don't know what the name is.

Q. You identified the picture, exhibit 9, the other day. Is that the same rock? A. Yes.

Q. The rock marked "boulder" in that picture?

A. Yes, sir.

Q. Does that correctly represent the rock taken this morning? A. It does.

Mr. SHACKLEFORD.—We offer it in evidence.

Objected to. Overruled. Plaintiff excepts.

It is marked 68 and admitted in evidence.

Q. I now hand you another picture, marked 69, and ask you if that was taken at the same time and under similar circumstances.

A. It was taken a short time before the other one was.

Q. On the same trip? A. Yes, sir.

Q. Does it correctly represent the conditions exposed there? A. It does.

It is admitted as Exhibit 69.

Judge WINN.—Before that is admitted, I want to question the witness.

(By Judge WINN.)

Q. Who went up there with you this morning?

(Testimony of Percy Pond.)

A. Mr. Stewart.

Q. Did he do any more work this morning?

A. He did no more work—he just directed me where to take the photographs.

Q. What time did you get up there?

A. About half-past ten or eleven; somewhere along there.

Q. Just you and he were alone? A. Yes.

Q. He is standing in the picture?

A. In one of those pictures he appears—the first one I identified. [1201]

Q. He didn't do any work of any kind up there?

A. He did not.

Q. He didn't have anybody do any work?

A. No.

Q. You went there this morning about ten o'clock and took it just as you found it? A. I did.

Judge WINN.—We urge the same objection to Exhibit 69. Objection overruled. Plaintiff excepts. (By Mr. SHACKLEFORD.)

Q. I hand you exhibits 70 and 71 and ask you to state whether they were taken under similar circumstances? A. I took them this morning.

Q. They are both correct representations?

A. Yes, sir.

Offered in evidence. Same objection.

By the COURT.—Were they taken at the same place?

A. At different points, in the same immediate vicinity.

Q. (By Mr. SHACKLEFORD.)—All directed at the same rock? A. Yes, sir.

(Testimony of Percy Pond.)

(By Judge WINN.)

Q. Did you take these all in the Borean pit?

A. I don't know it by that name. It was pointed out to me—the same place I have been photographing on other occasions, the bluff by the side of the open cut there, referred to on the former occasion.

Judge WINN.—We object to these pictures for the same reason as the others, that I have been under the impression that they were to collect all their evidence up to last night. This won't give us the time to rebut anything that may appear from these pictures.

By the COURT.—They reserved the right to introduce these photographs. Objection overruled; 70 and 71 admitted. [1202]

[Testimony of R. D. Stewart, for Plaintiff (Recalled in Rebuttal).]

Mr. STEWART, recalled.

(By Mr. SHACKLEFORD.)

Q. I will hand you these four exhibits marked from 68 to 71, inclusive, and ask you to take them and look at the numbers on the back and explain what they represent?

Judge WINN.—We make the same objection, and also that it is not the best evidence.

Objection overruled. Plaintiff excepts.

A. Sixty-eight shows the bottom of the boulder referred to as the large boulder—I have my hand underneath. That represents the bottom of the boulder and I am standing in the bottom of a little shaft right back of the head—shows where stulls

(Testimony of R. D. Stewart.)

were put underneath there to hold the mass up. My hand was placed in that position in order to show that the under surface of the boulder slopes back up hill; that was the purpose of that picture. Sixty-nine is the same cut, and according to the marking—the marking is upside down; the bottom of the handle of the shovel is at the bottom of the little shaft. He has marked the wrong end for the bottom. The spade portion of the shovel should be up in this photograph and it shows the cross-section underneath the boulder in the washed material, where it is exposed by means of the shaft. No. 70 is a general view of the boulder itself—the rim of the Borean pit, the hole which is dug and the shovel in the same position as in the other photograph—that is, the handle of the shovel was down at the bottom of the little shaft and the spade part of the shovel is above. Number 71 was taken by me to show the last point up the creek approximately, the last point up the creek where bedrock appears in the Borean pit. The bedrock is shown in the base where the rivulet runs, where the spade of the [1203] shovel is; thus looking right up the pit, this bedrock here where the little strata is shown and the stream shows—everything from along the slide where I have the pencil, and the large boulders in the left background.

Witness excused.

[Testimony of Angus Mackey, for Plaintiff
(Recalled in Rebuttal—Cross-examination).]

Mr. MACKEY.—Continuation of the cross-examination.

(By Mr. SHACKLEFORD.)

Q. Take your pencil and mark on that exhibit 68 the rock you claim you found as part of the bedrock.

A. This shows the rock, the part of that reef overhanging here. Here it is that Mr. Stewart or somebody had excavated, where he is standing; it shows the stulls that were put up there for Mr. Stewart; it don't show any cutting away, as I can see. Down through here, the trend of the formation right here, is where we dug out instead of coming under the bluff here. This is simply an overhanging part of that reef.

Q. What time did you dig out?

A. This morning, between half-past 5 and 7.

Q. Show me where you dug out.

A. It is running in this other way. This shows the front.

Q. That picture don't show where you dug out?

A. Not exactly. It would show running this other way, running back with the trend of the formation.

Q. Mark on that picture where you exposed bedrock, where it would be.

A. It don't show clearly where that would be.

Q. Indicate with an arrow or point in some way.

A. In a general way I will.

Q. Indicate with an arrow where it would be that you have exposed [1204] rock in place underneath there.

(Testimony of Angus Mackey.)

A. That photograph wouldn't show it.

Q. Would it be below or above the level of the photograph?

A. It is there—that is approximate, you know.

Q. Part of this same boulder that is overhead?

A. Part of this same reef—this reef overhangs here and where we saw the solid formation was in here.

Q. Approximately where that arrow is?

A. Approximately; yes.

Q. I hand you exhibit 69. Indicate there where there is any rock in place underneath the overhanging rock.

A. The whole reef here is in place, if that is what you mean.

Q. The whole reef is in place? A. Yes.

Q. That is not drift material in here?

A. That shows an opening in here.

Q. Where is the place you uncovered this morning by going 4 to 6 inches?

A. It don't show there in that picture.

Q. It would not be on the front—it is not shown looking exactly to the front?

A. This would show it to the left—down the hillside.

Q. I want you to describe to the Court how that vein comes up and meets the boulder—did you trace it up to the overhanging ledge by uncovering it. The overhanging rock under which this excavation has been made—did you trace the rock you claim to have found in place up to that body of rock?

(Testimony of Angus Mackey.)

A. Why, yes—the contact was made right against this diorite here.

Q. What is the nature of that contact?

A. It is a yellowish stuff—this is part of it. We took a sample of it. (Referring to “SS.”) [1205]

Q. You want the Court to understand that this is rock in place?

A. I want the Court to understand that is rock in place.

Q. What is that—exhibit “WW”?

A. That is what I would call the diorite on this reef.

Q. This is a part of the contact? A. Yes, sir.

Q. Well, now, by using the word “contact” you don’t want the Court to understand that you discovered the same rock but you discovered the rock which you conceived ought to lie next to the bedrock that is uncovered and overhanging in the drift there?

A. That’s it—it lies right against it.

Q. So far as following the roots of that rock down, you didn’t do anything, but you simply found what you thought to be the contact?

A. We satisfied ourselves it was in place and we could easily see that as soon as it was uncovered—you could see it was in place.

Q. As soon as that brown stuff is uncovered?

A. As soon as you have done sufficient work to show the whole formation there—where you could see it was no boulder at all.

Q. This brown rock “SS” was not broken off of

(Testimony of Angus Mackey.)

what we claim to be the boulder, was it?

A. It was lying next to the hard diorite.

Q. It was not broken off of it—it is a contact, as you claim, and not broken off of it.

A. I claim it is a contact; yes.

Q. It was not physically disengaged—this rock and what we claim to be the boulder were not cemented together?

A. No; it is separated, so it would come apart from the other. [1206]

Q. How large a piece of rock was that broken off of?

A. It was in place down there. We just broke part of it off.

Q. How large a piece was it you broke this off of?

A. I couldn't say. We just took that where it showed solid at the bottom.

Q. Where it stuck up?

A. No; it was solid down at the foot of this, on the left-hand side.

Q. How much of it did it show to convince you it was solid? A. I couldn't state just exactly.

Q. But you don't want the Court to understand that you have cut through the debris under that rock to a lower depth than the depth of that tunnel and brought here any sample of the same rock? I mean the tunnel which has been made here for the purpose of exposing that cavity under the rock.

A. The pit and overhanging rock under it?

Q. Have you samples of the roots of that rock that

(Testimony of Angus Mackey.)

has been excavated under there? I mean the downward extension that wasn't exposed by Stewart's excavations?

A. This was taken out after we had opened up along the trend.

Q. Which was taken out—the brown rock?

A. Yes.

Q. I want you to tell the Court whether you have found and brought here any specimen of rock that was not uncovered by Mr. Stewart's investigation of the same character as the rock under which he has made the excavation.

A. This here was not uncovered by Stewart, I don't think.

Q. You don't claim that is a piece of the rock which he is excavating under—you simply claim it is a contact? A. Yes.

Q. And that it was not actually, physically, broken off of the [1207] ledge which is exposed and under which he has been excavating?

A. It is right up against it on the other side. It would be in a square like, coming down here, and he came down this side.

Q. Where else did you find that contact?

A. That is the place we found it.

Q. Anywhere else?

A. No; we didn't look for it anywhere else.

Q. You say it is a contact without establishing it except at one place?

A. It was in that place, solid.

(Testimony of Angus Mackey.)

Q. How big a rock was this taken off of, as far as you could see?

A. It was several inches. I couldn't state how many.

Q. Which way does that rock excavate?

A. It hangs over straight, like that.

Q. It hangs down toward you as you stand on the outside?

A. It kinder overhangs—it just overhangs.

Q. The inclination is a little—

A. It might be a little down.

Q. But it is not one of those excavations that expose the rock as flaring up, in an upward angle?

A. It kind of hangs over like that—I mean where they have the stulls.

Q. I am talking about the stratification. You know as a matter of fact that the position of white quartz in diorite all the way up there is not in any set pitch?

A. Well, it varies, what I have seen of it up there.

Q. What you call the stratification of the ore in that country is the stratification of the main rock and not of the [1208] quartz seams, is it not?

A. They both seem to run about the same way, as far as I could see.

Q. You know, as a matter of fact, that the quartz seams cross each other and separate themselves into the various crevices of the main formation in every direction? A. Not that I have seen.

Q. And separate out in different directions?

A. They may cross but not any I have opened up.

(Testimony of Angus Mackey.)

Q. You know the deposit up there is distinguished by the fact that quartz veins have filled in the fractures in various directions in the main body of the rock, don't you?

A. Well, I am not prepared to state.

Q. (By Judge WINN.) You have noticed they seem to have the same sort of dip or run somewhat in the same direction, the larger stringers?

A. Yes, sir.

Q. What is the size of this stringer in this boulder—what you call a reef and what we call a boulder?

A. From two to six inches.

Q. Just one seam in there?

A. No, there are two.

Q. And they are not parallel, are they?

A. Yes, they appear nearly parallel—they are pretty nearly parallel.

Q. Here is the quartz seam beginning at "A"—I am referring to "PP."

A. Yes; it does not show it very plain—the trend is over here, I think. It doesn't show very plain.

Q. There are not any quartz seams in that rock that run at right angles or any different direction from that?

A. Not as I have seen. There might be, altho I didn't see it. [1209]

Q. They are about how wide?

A. From two to six inches, I should say. They vary in width.

Q. You know as a matter of geology that the finer quartz seams in that whole country are deposited,

(Testimony of Angus Mackey.)

not by any set geological action but by the circulation of waters in the fracturings, however they may be termed? A. That is what I understand.

Witness excused.

[Testimony of Wm. M. Ebner, for Plaintiff (Recalled in Rebuttal).]

WM. M. EBNER, recalled.

(By Judge WINN.)

Q. Here is a series of new pictures that have just been offered in evidence. I hand you No. 69. If you can tell from that photograph as to where approximately you found this formation when you extended down alongside the rock just a few inches from the pit Stewart sank, I wish you would point it out on that photograph.

A. It is not on here, no, sir; and another thing, the work has been changed up there since we have been up there this morning—they only had one stull and here they have two propped in there.

Q. You say there was only one prop under there when you were up there this morning?

A. Yes, sir.

Q. There was another one put in between the time this picture was taken and when you were up there this morning? A. Yes, sir.

Q. Now, I will ask you from an examination of that rock up there whether it looked like there was any immediate danger of it dropping off or slipping off or sliding off?

A. No. If you were going to work there a long time, as a precautionary [1210] measure on the

(Testimony of William M. Ebner.)

very corner of that rock you might put a stull under but it extends right down solid.

Q. Those quartz seams, would they have a tendency to hold it together or would they generally break if you did any shooting around there?

A. It would fracture them.

Q. Is there anything else in that photograph that shows any particular place that you made any examination of?

A. No; this photograph shows just one particular little space enlarged—just one little spot there.

Q. I will hand you the one with the man and spade—No. 68. Is there any change in the conditions in that photograph?

A. Yes; there has been some excavating done. There is a short timber put in here that was not there this morning, and they have evidently picked out some soft rock here, some soft seams, the softer part there, to show that it is loose, when, in fact, this being next to the footwall and overhanging, there is some soft seams in this rock in place, and where this gentleman has his hand, that has been picked out for the purpose of showing—to show there is a crack there.

Q. Take it down along the man's feet, down towards the ground, and explain to the Court if that contains anything you testified concerning?

A. No; that is not down low enough—that doesn't show it low enough there.

Q. What is that down about the man's foot—is that the continuation of that same formation?

A. Down below, further down, evidently there is

(Testimony of William M. Ebner.)

where the pit was that Mr. Stewart testified about yesterday and that pit is not visible over here on this picture. [1211]

Q. Here is a picture with the prop knocked out—No. 70?

A. That is about as we found it this morning—just about.

Q. Did you see that second prop there this morning that is lying on the ground?

A. No, sir; I saw it lying there, I think, but it was not put in place.

Q. Is there anything in that photograph that you can indicate as to the point that you did any work this morning to follow down this formation?

A. The pit is visible but not the depth of it—you can't see down to the bottom.

Q. I will hand you No. 68 and ask you if that rock commencing over the head of the man and continuing down to his feet, if you know sufficient about the rock there to say whether that is a continuation of the same formation and the same rock?

A. Yes, that is the same rock in place and it shows more particularly right by the man's feet there—that is all the same rock—there is a softer streak in there for a little ways where they dug it up.

Q. This No. 71—is there anything you want to point out on that?

A. That is a view taken from the creek, close to the creek, up to the Borean pit, and shows in the distance this same reef on the left—it is along in here. Here is about where we started in to bare the bed-

(Testimony of William M. Ebner.)

rock; that is where the excavations were made last Sunday, and then we followed it on up, up to the rock in place, or the reef in place.

Q. How is the inclination of that rock as it projects out into the pit—at about what angle does it go down or up into the hill? Can you tell? [1212]

A. Yes; here is the pit along this way. This rock is on the north side of the pit and it dips to the northeast about 50, and it is under this that this excavation was made, and it is this overhanging part that these pictures are taken from.

(By Mr. SHACKLEFORD.)

Q. I understand you want the Court to understand that the rock referred to is an overhanging ledge, not declining, but dipping in an upward direction as you look at it from the pit.

A. I mean to say that that is a reef or a diorite belt, and it being harder than the footwall or greenstone has been left there and shows the west side line exactly and shows that it dips with the balance of the formation to the northeast.

Q. Away from the pit?

A. Not away from the pit, because the pit is at right angles with this and this rock in place is on the north side of it. The pit is on the south but the cross-section—

Q. It dips to the northeast?

A. It dips to the northeast.

Q. Now, in this picture you say that Stewart is not standing on the bottom or the lowest point in the excavation?

(Testimony of William M. Ebner.)

A. Not in the lowest point that was excavated this morning; no.

Q. You said something about finding a footwall—that does show that?

A. It would by following that right down there.

Q. And I also understand you to say this soft material here is a decomposition of the diorite rock?

A. Diorite itself.

Q. Decomposed?

A. In certain places along the under side.

Q. Along the contact? [1213]

A. On the contact, where the contact was.

Q. What is that? Referring to "SS."

A. That is a part of the diorite next to the contact with the greenstone, that is what that is. The greenstone comes right along on the west side; this is the contact—it is a contact between the two dissimilar rocks, this being a greenstone and this being a diorite; this is a part of the diorite and is soft and that was picked out with a pick.

Q. Broken off of this reef? A. Yes.

Q. Part of the same rock that we have had samples of here that is under discussion, whether it is a boulder or reef?

A. Yes, sir. And beyond those a few inches we have a few pieces that are hard, not being decomposed.

Q. You broke those off the same rock that is in controversy? A. Yes, sir.

Q. So Mr. Mackey is mistaken in saying it was not broken off?

(Testimony of William M. Ebner.)

A. I don't know whether he is mistaken.

Q. Who did the breaking?

A. Graham handled the pick.

Q. Where were you standing when it was broken?

A. I was standing right close by.

Q. In the pit?

A. No, not in the pit; at the edge of the pit.

Q. The pit is lower in level than the cut underneath? A. Yes, sir.

Q. You saw him break it off this same rock that is in controversy? A. Yes, sir, I did.

Mr. SHACKLEFORD.—We now offer the exhibits in evidence. They are admitted, subject to objection of plaintiff and exception. [1214]

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, the consent you gave Mr. George Bent to build a flume was across the Dora group—across the Forrest and the other patented claims of the Dora group, was it not?

A. Yes, sir—the Forrest is in the Dora group.

(By Judge WINN.)

Q. You gave him consent to cut across, to go across, the unpatented claims too, did you not?

A. The Cape Horn?

Q. Yes. A. Yes.

Q. As well as the patented? A. Yes.

(By Mr. HELLENTHAL.)

Q. What unpatented claims have the Dora group there?

A. The Dora group has no unpatented claims.

Q. You didn't give him consent to go across un-

(Testimony of William M. Ebner.)

patented claims of the Dora group then?

A. The Cape Horn and Eureka claims are also in the option.

Q. They are part of the option that George Bent has from you? A. Yes.

Q. You didn't give him any consent to cross those claims? A. I certainly did.

Q. He has an option on those?

A. That doesn't make any difference. I gave it to him just the same.

Q. You gave him consent to build the mill there, too? A. Yes, I did.

Q. All at the same time?

A. All at the same time.

Q. He asked you for consent to build a mill and you told him he could build a mill and build a flume?

A. Yes, sir. [1215]

Witness excused.

Judge WINN.—We now offer this photograph from Bulletin 287, which I identified yesterday.

(It is admitted as "NN.")

Judge WINN.—We offer the rule found on page 14 of the rules of the Manual of Instruction for Surveyors of Land, etc., 1895, for the purpose of showing that calls are made to those natural objects and are so treated by the surveyors for topographical purposes, so they can be put on the map. This applies to Alaska. It is Numbered 24, directions to surveyors, etc. As I say, it applies to Alaska as well as anywhere else.

By the COURT.—It will be admitted. The Court

is supposed to take judicial notice of those things— if there is any change, either side would be permitted to call attention to it at any stage of the trial of this case or on appeal, because the Court is supposed to take judicial notice of any changes either by Congress or the heads of departments.

Judge WINN.—If there are any exhibits I have heretofore identified and not offered, I now offer them so as to cover that phase of the case—those that have not been rejected.

Mr. SHACKLEFORD.—Objected to as incompetent, irrelevant and immaterial—so that we may urge any objection we may desire to each exhibit.

By the COURT.—It being understood that this order does not apply to exhibits which have already been rejected, the order will be made and objection overruled. Defendant excepts. [1216]

[Testimony of F. J. Wettrick, for Plaintiff (Recalled in Rebuttal).]

F. J. WETTRICK, recalled.

(By Judge WINN.)

Q. I call your attention to Plaintiff's Exhibit "N" in this case and ask you as to what point on this exhibit the large dam of the Jualpa Company is located. Mark it approximately.

A. It is marked already on the plat; it is marked with a black X on the westerly side of Gold Creek.

Q. I mean the big dam of the Jualpa Company in Gold Creek, not the little dam on the Lotta claim which leads off of the high line flume? Mark it by

(Testimony of F. J. Wettrick.)

some letter that does not already appear on the map.
(Witness does so.)

Q. How far approximately is it from that dam up to the Idaho or Colorado claim as platted on this exhibit? A. To which corner of the Colorado?

Q. Going up the creek, going directly up the creek, approximately how far is it before you reach any part of the Colorado or Idaho claim? I mean to include in that any part that might have been in conflict between the Jualpa Company and the defendant company—up the creek.

A. Approximately 400 feet—if I had a scale I could give it to you closer.

Q. Here is a scale.

A. It is approximately 400 feet—it follows that description I checked over with this map.

Q. How far is it up to the pieces or portions of the Colorado and Idaho which is included in two triangular pieces with some considerable coloring made by cross lines with black ink?

A. That is the portion I had reference to up the creek where it strikes that—that is the 4-3 of Survey 142.

Q. How far is it up the creek to the upper side line, to the [1217] further portion of that part I have described to you, from the big dam?

A. It is approximately 200 feet further; altogether approximately 600 feet.

Judge WINN.—Now, I offer in evidence in this case the memorandum agreement between the defendant company and the Jualpa Company, which

(Testimony of F. J. Wettrick.)

contains a description of the property we claim we were working on—for the purpose of showing that Lockhart was mistaken in saying that we went on any of the property of the defendant company, and for the purpose of showing from the recitals, etc., in there that this property had always been claimed by us under the Telegraph placer claims, and we do not offer this for any other purpose except the description, which both parties acknowledged was in conflict—to show that that part was always claimed by us under the Telegram placer location and was at the time they made application for a patent, and not to show any compromise.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff allowed an exception.

Mr. WETTRICK.—I want to correct the first distance I gave. I said 400—it is 300 feet, up to the beginning of the side line of that survey 4-3 of 142. That knocks off the distance just 100 feet.

Witness excused. [1218]

Sur-rebuttal.

[Testimony of R. D. Stewart, for Defendant
(Recalled in Sur-rebuttal).]

Mr. STEWART, recalled.

(By Mr. SHACKLEFORD.)

* * * * * * * *

Q. You heard Mr. Ebner's testimony with reference to the change in conditions as shown in the

(Testimony of R. D. Stewart.)

photographs taken when you took Mr. Pond up there to the boulder this morning?

A. Yes, I heard his testimony.

Q. I will ask you to explain to the Court whether there is any change there and what the condition is with reference to the bottom of the pit and the conditions there as to new or extra stulls, the placing of new or extra stulls under the projecting rock and further as to any change in the position of rock or debris in that vicinity?

Objected to as not proper sur-rebuttal. Overruled. Exception.

A. I will state that the first time I was there this morning was when I went with Mr. Pond to take these photographs, and at that time the ground, as far as I could see, was absolutely the same as it was when I was there yesterday. With reference to the stull I will say I had that put there at one o'clock in the afternoon, and as far as I could see it was absolutely the same as when I left it at that time—yesterday afternoon.

Q. Both stulls? A. Both stulls; yes, sir.

Q. Did you hear Mr. Ebner's statement with reference to your having some change made there where you were holding your hand so as to create a false impression with reference to the rock overhead?

A. I did.

Q. State to the Court about that.

A. Where I had my hand was underneath this and

(Testimony of R. D. Stewart.)

the conditions at that point were absolutely as I left them yesterday afternoon at three o'clock—no change whatever has been made [1219] since that time.

Q. And he also made the statement there had been some change with reference to the debris or soft rock, as he termed it, which appeared at the background of the picture?

A. There is absolutely no difference as far as I could see. I know I didn't disturb it in any way.

Q. There is no difference in any respect as to the condition of the ground as you saw it this morning and what you saw there last night except some excavations that Mr. Ebner claims to have made?

A. I didn't make any change whatever.

(By Judge WINN.)

Q. In one of the photographs I see the prop is down, in the other it is up.

A. No; you may have been looking at the photograph upside down. Mr. Pond has marked that wrong. That should be the top instead of the bottom.

Q. (By the COURT.) Is the date on that?

A. Yes, sir, it is the 8th—taken this morning.

Q. How about that one on the ground?

A. That stull on the ground was in there the day before yesterday, but yesterday afternoon, when I placed those two there, I replaced that small one, it was too low—we obtained some heavier stulls but that stull was lying there yesterday afternoon when

(Testimony of R. D. Stewart.)

I left; there has been no change in the position of that stull.

Q. When did you replace the small stulls and put in large ones?

A. About noon yesterday, after lunch—about one o'clock, perhaps. [1220]

Q. Was that after you got through with the work?

A. No, it was before we got through with the work. I had to put the stulls in there in order to go deeper.

Q. How many stulls did you have there day before yesterday?

A. One—that light one that is lying on the ground now.

Q. And you had two when?

A. Put the two heavy ones in yesterday right after lunch.

Q. There had been a change made there by you of the stulls?

A. Not since this morning, no. I understood Mr. Ebner's testimony that that change took place since he was up there this morning.

Q. There was a change made from smaller ones to larger ones since you have been going up there and you made that change yesterday?

A. Yesterday, at noon.

* * * * *

Witness excused.

Testimony closed. [1221]

[Certificate of Stenographer to Testimony.]

I do hereby certify that I am the official court stenographer for the Third Judicial Division, Territory of Alaska; that the Hon. Edward E. Cushman, the Judge before whom the trial of said above-entitled cause was had, was, at the time of the trial of said cause, and is now, the regular presiding judge of the Third Judicial Division; that he, the said Hon. Edward E. Cushman, occupied the bench of the First Judicial Division in the Territory of Alaska during the trial of said above-entitled cause in place of Hon. Thomas R. Lyons, the regular judge of said First Judicial Division; that I reported the trial and proceedings in the above-entitled cause, to wit, *Ebner Gold Mining Company vs. Alaska-Juneau Gold Mining Company*, and that the foregoing is a full, true and correct transcript of all the testimony at the trial of said cause which in any way refers to the Parish No. 2, Canyon and Oregon Lode Claims and the customs of miners in Southeastern Alaska with reference to the acquisition and appropriation of water and water rights, and conveying such water to the place of use.

Dated at Valdez, Alaska, May 15, 1912.

ISAAC HAMBURGER. [1222]

[Additional Evidence.]

*In the District Court for the District of Alaska, First
Division, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

**ALASKA-JUNEAU GOLD MINING COM-
PANY**, a Corporation,

Defendant.

**Balance of Evidence, to Complete Bill of Exceptions
and Transcript.**

[Testimony of Lloyd G. Hill, for Plaintiff.]

Additional evidence of LLOYD G. HILL.

(To follow the omission indicated by * * *
on page 104 of original transcript [printed record,
page 250].)

(By Judge WINN.)

Q. Now, when you went on there in 1898, what
part of the running of this line did you do—what
work did you perform in connection with the run-
ning of that line—you were not the surveyor then?

A. No; I assisted in the chaining, building or set-
ting up flags at points along the line, so the transit
man could run by foresight and back sight.

Q. I will ask you if, at that time when you were
aiding George W. Garside in running this lower end
of the Lotta claim, the side line, if you discovered
any stakes or monuments along this boundary line.

(Testimony of Lloyd G. Hill.)

A. Yes, sir.

Q. Just state to the Court and point out on this map or plat that has been marked exhibit "N"—state to the Court what you found and where you found it.

A. We first found stake Number 6—it was marked at that time of the Lotta claim. We found the stake about 192 feet southeasterly, right near the Basin road, on the side line of the Lotta, which was an intersection of the Forrest and Lotta [1224] side lines, and we also found stake Number 5, marked Lotta, United States Survey #87, on the east side of Gold Creek, about 600 feet, I should judge, from the creek.

Q. I will ask you if you saw anything of any cabin or building in, along or near this lower side line of the Lotta claim at that time.

A. Yes, sir, I did. I saw a cabin there, an old cabin almost due north from the corner—that is, about 95 feet away.

Q. What corner?

A. From Corner Number 5 of the Lotta.

Q. Did you hear Mr. Ebner's testimony yesterday? A. I heard some of it.

Q. Did you hear something said about an old cabin near this corner stake? A. Yes, sir.

Q. Now, what distance, approximately, is that old cabin from this stake?

A. That old cabin—I know it exactly, because I measured to it—it is 96 ft.

(Testimony of Lloyd G. Hill.)

Judge WINN.—Let the record show that I refer to the lower side line of the Lotta claim—that I refer to the side line that connects #2 and 5.

Q. Now, I believe you stated that you were up there with Garside in 1898. What did you go up there for, to make a survey of anything?

A. Yes, we went up there to find out where the Lotta side line that is the southwest side line—

Q. You mean the lower side line?

A. The lower side line passed through Gold Creek and crosses the Jualpa dam or the Last Chance dam or flume at that time. [1225]

Q. This is the same George W. Garside that made the survey of the Lotta claim for a patent that you were with? A. Yes, sir, it is the same.

Q. (By the COURT.) You wouldn't be between 2 and 5; that would be between 5 and 6, wouldn't it?

A. Yes, sir, between 5 and 6—this is 5 and that is 6.

Q. What does that 2 up there at the corner of 6 indicate?

A. That is 2 of the Etta claim—when I refer to the lower side line of the Lotta I refer to the one between corners 5 and 6.

Q. You say you were trying to determine the location of this Lower side line of the Lotta to find out what was on that property?

A. To find out how far the Last Chance high line flume entered into the Lotta claim.

(Testimony of Lloyd G. Hill.)

Q. Is the high line flume of the Jualpa Company marked on this map? A. No, sir.

Q. Do you know where the high line flume of the Jualpa Company taps Gold Creek with respect to the Lotta claim? A. Very close, yes, sir.

Q. I wish you would mark on there by the letter "X" in black ink approximately where that Jualpa high line flume taps the water of Gold Creek.

(Witness does so.)

Q. You have marked it with the letter "X" which is near the figures 1888 on the Lotta lode claim?

A. Yes, sir.

Q. This is the same trip that you say you discovered the stakes which you described to the court this morning? A. Yes, at that time. [1226]

Q. It was while you were doing this work?

A. It was while I was doing this work, yes.

Q. When was the next time that you were up there and had anything to do with the boundaries of the Lotta lode claim?

A. Well, the next time was 1899, I think, when the Colorado claim was located and Idaho placer by the Alaska-Juneau Company.

Q. You were up there then? A. Yes, sir.

Q. Did you go over any part of the Lotta lode claim at that time?

A. I at that time made just a quick survey of it as well as I could, and I started from Post #5 of the Lotta and ran along the southwest side line of the Royal claim to set the northeast corner of the Colo-

(Testimony of Lloyd G. Hill.)

rado lode at that time, its location.

Q. What company had you up there to locate the Colorado? A. The Alaska-Juneau Company.

Q. Did you find any stakes of the Lotta at that time? A. I did; yes, sir.

Q. What stakes or corner posts did you find on the Lotta when you were up there in 1899?

A. I found the southeast lode line post of the Lotta and I found the corner #5 and I also saw Corner #6—I had that line for a back sight.

Q. Where was the corner #5 of the Lotta claim then in respect to where it stood when you saw it in 1898? A. The same place, the same stake.

(To follow omission on page 108 of transcript [printed record, page 254] indicated by * * * .)

Q. I will ask you if at the time you made the survey of the Forrest lode claim with Garside, if you and he together [1227] found any of the corners, posts or stakes, etc., of the Lotta that you have been testifying concerning? A. Yes, sir, we did.

Q. Just tell the Court what you and Garside found upon the ground at that time.

A. We found stake #6 of the Lotta; we found stake Number 1 of the Lotta and the northeast corner stake was in the creek, and that we did not find.

Q. What corner was in the creek?

A. The northeast corner of the Lotta—that would be corner #2, and we also found the claim lying adjacent to the Lotta on the northeast, the Taku lode

(Testimony of Lloyd G. Hill.)

claim, we found one of the corners of that.

Q. Where were those stakes you have testified concerning that you saw, that you had seen before, in reference to the location—that is, were they in different places or the same places you had seen them before?

A. They were in the same place—stake Number 6 and stake #1.

Q. Now, in making that Forrest lode survey, I observe on the map there that there is a corner called W. C. 2, which is on this identified exhibit “N,” apparently on the boundary line of the Lotta lode claim, the side line—in making this survey of the Parish, was there any corner established there at that place at that time? I mean, in making the survey of the Forrest. A. There was.

Q. Why was the corner established there at that time?

A. To show the intersection between the southeast end line of the Forrest lode with the southwest side line of the Lotta lode. [1228]

Q. Have you seen that corner since it was established? A. I have.

Q. When did you see it next?

A. I saw it next in—I used to see it quite often, every time I walked up the Basin.

(To follow omission on page 110 of transcript [printed record, page 256] as indicated by * * *.)

Q. I will ask you if on this lower side-line of the Lotta you saw any stakes there?

(Testimony of Lloyd G. Hill.)

A. I did, yes, sir. I saw stake #5, stake #6, and I saw the southeast lode line stake.

Q. Where were they then with respect to where you had seen them before?

A. In the same place, according to my judgment.

Q. You said you saw corner stakes 5 and 6—corner stakes 5 and 6 of what claim?

A. Corner stakes 5 and 6 of the Lotta.

Q. Was this little old house still there, then?

A. Yes, sir.

(To follow omission indicated on page 111 of transcript [printed record, page 258] by * * * .)

Q. (Repeated.) I will ask you if in those official field-notes of the survey of the Royal lode, if you found any ties made to any of the corners of the Lotta claim? A. Yes, sir.

Mr. HELLENTHAL.—I think that is immaterial—we don't know when the Lotta was surveyed. This has nothing to do with the location of the Lotta, whether it is a subsequent survey, I don't know. [1229]

By the COURT.—I think it is objectionable as not being the best evidence.

Judge WINN.—I will ask him if he remembers the courses and distances, what they are. The notes are there, and if he don't remember, we can get them.

Mr. HELLENTHAL.—I would like to know to what extent counsel desires to go into this matter, and what he desires to prove. If he wants to prove something material, I will insist on his bringing in the best evidence.

(Testimony of Lloyd G. Hill.)

Judge WINN.—I am going to show that all these surveys made along here have always recognized the Lotta lode claim as we claim it on the ground and between these stakes. The contention of these parties has been that the lower end of the Lotta claim was not where we contend it is, that is, the reason I am establishing that claim. I am going to tie that Lotta claim in there by those surveys, the survey of the Royal lode claim. There is a tunnel on the Royal, and there is a bearing taken to one of those corners from that natural object. The tunnel is there yet and we tie up one of the corners of the Lotta to that natural object, showing that corner of the Lotta was the same place when the survey was made as it is now—the fact is we are tying the claim in there.

Mr. HELLENTHAL.—I make a new objection then. It clearly appears that all this proof is incompetent, irrelevant and immaterial. In the first place, it would be merely hearsay testimony, anyhow, as to what anybody else recognized as being a corner.
* * * The only way to locate the Lotta claim is by going back to its own patent notes and finding in those notes the ties to which it ties and tying it on the ground by those notes—the stakes that were put there at that time. [1230]

By the COURT.—I don't see why there should be any dispute then. The objection is overruled.

To which ruling the defendant is allowed an exception.

Q. What did you find, Mr. Hill?

A. Corner #5 of the Royal lode is identical with

(Testimony of Lloyd G. Hill.)

Corner #5 of the Lotta lode and the northwest lode line post of the Royal lode is identical with corner #3 of the Lotta lode. From the Corner #3 of the Lotta, identical with the northwest lode line of the Royal, there is a bearing given to an old tunnel—

Mr. HELLENTHAL.—Let it be understood that we object to all this line of testimony with reference to the location of another claim located subsequent to the Lotta and any effort to establish the location of the Lotta upon the ground by proving that some other survey was made to fit it as they claim it should be fixed.

By the COURT.—This question of whether the boundaries as marked control over the calls of the patent not having been yet decided, the question of the recognition of these boundaries as marked may be made in the final determination of the case, and for that reason the objection is overruled. The record will show your objection to this line of evidence and exception is allowed.

WITNESS.—(Continuing.) The bearing of an old tunnel is given from that point. The tunnel bears south 17—13 East 132.4 feet distant—

Mr. HELLENTHAL.—If they want to show the courses and distances they must call the man that made the survey.

Q. (By the COURT.) You said George W. Gar-side made the survey? A. Yes, sir.

By the COURT.—I will sustain the objection as not the best evidence. [1231] If you are going to prove that, prove it by the notes themselves.

(Testimony of Lloyd G. Hill.)

(To follow omission on page 113 of original transcript [printed record, page 259] as indicated by * * * .)

Q. Did you find any corner posts, stakes or monuments marking the boundary of the Lotta lode claim in August, 1910, that you were on this property?

A. Yes, sir; I did.

Q. State to the Court what you found there.

A. I found post Number 3, post #4, post #5, post #6, post #1 of the Lotta.

Q. Where were those posts in 1910 in respect to where you had seen them before?

A. I think they occupied the same position that I had seen them in the first time I had ever seen them.

Q. Was this old cabin that is marked on this exhibit "N," house, at the lower end line of the Lotta claim, there at all these times that you went upon that ground? A. It was; yes, sir.

Q. Did you ever observe the relative location of this cabin and the stake, the corner post there you testified as being one of the corner posts of the Lotta lode claim? A. Yes, sir; I did.

Q. At those various times that you saw this corner post or stake, how was its location in relation to this building—did it change any, or was it the same?

A. It seemed to be about the same. I never measured it prior to 1910, but estimating the distances, I should say it was practically the same—it may have been changed a few feet. [1232]

Q. Did it look like the post had been reset and changes made in that respect?

A. No, sir; it did not.

(Testimony of Lloyd G. Hill.)

Q. In what condition of preservation was the stake?

A. The original patent stake is there tacked or tied—

Mr. HELLENTHAL.—I don't like that expression, the original patent stake, etc. .

By the COURT.—That will be stricken.

WITNESS.—(Continuing.) There was a small stake there, two by four inches; the bottom of it is rotted off and *it marked* with black paint P. 5 U. S. S. Lotta, and that is tacked or tied—I am not certain which; it is in a mound of stones—to a larger stake, a stake 5 inches square.

Q. And that is the condition it is now?

A. On one side—and on the southeast side it is marked Royal 5 S. 238.

Q. Now, I will ask you from those various surveys you made there with Mr. Garside and assisted him in making, I want to ask you if those were the original corner posts put on there and used as survey corners. A. I think they were; yes, sir.

Mr. HELLENTHAL.—I object to the question as too indefinite.

By the COURT.—The objection will be sustained to the question in its present form.

Q. I will ask you if that stake that you spoke of down there near the old cabin, the old stake, was taken out—from the surveys you made with Garside, assisted him in making and the ties you ran off these lines, etc., I will ask you, then, if that appeared to be

(Testimony of Lloyd G. Hill.)

the original corner post that the claim was patented by? [1233]

Mr. HELLENTHAL.—We object to that as not a proper subject for expert testimony.

Objection overruled. Defendant allowed an exception.

A. It did.

Q. I will ask you if, in these various surveys that you were there with Garside on, if he always recognized the lower side line of the Lotta lode claim to be on the ground lying between Corners #5 and 6 as indicated on this exhibit?

Mr. HELLENTHAL.—We object to that as incompetent, irrelevant and immaterial and as hearsay.

Objection sustained.

Q. Now, I will ask you, Mr. Hill, as to when you and Garside were up there in making this survey to determine as to where the high line flume of the Jualpa Company tapped Gold Creek—I will ask you where you and Garside together located the lower side line of the Lotta claim.

Mr. HELLENTHAL.—We object as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. He located it as shown on that map and from the corners as I have described.

By the COURT.—You were asked how both of you located it.

A. We both located it in that manner.

Mr. HELLENTHAL.—The objection goes fur-

(Testimony of Lloyd G. Hill.)

ther—what Garside did is another matter that this witness cannot testify to.

By the COURT.—The objection comes too late. Objection overruled. Defendant allowed an exception.

Q. What other, if any, monuments or corner posts of the Lotta lode claim did you, together with Garside, find upon this Lotta claim when you were up there and had these trips, besides 5 and 6 and those along on that lower side line? [1234]

A. We found 5 and 6 and corner 1, corner 3 and corner 4 of the Lotta.

Q. Have you ever run off the side and end lines of the Lotta lode claim lately to ascertain where they were with reference to these particular monuments that you have just spoken of? A. Yes, sir.

Q. When did you run off the boundaries of this claim to ascertain that?

A. Last fall, I forget just what date, but some time, I think, in November.

Q. Did you find these corner posts or some other posts on the boundary lines of the claim at that time?

A. I did; yes, sir.

Q. And these new ones you have just mentioned, how were they located when you ran it off last fall in relation to their location, when you first saw them there? A. In the same position.

Q. Mr. Burton has called my attention to the words, "same position," that may be a relative term, whether they were standing straight or standing over—do you mean the same place?

(Testimony of Lloyd G. Hill.)

A. Yes, the same place, the same locality.

(To follow omission on page 122, as indicated on the said page of the original transcript [printed record, page 269] by * * * .)

Q. I have the complaint in this action; I wish you would take it and look at the survey and description as given of the Lotta lode claim, and I will ask you if that is a correct description of the Lotta lode claim as it is on the ground according to the several monuments that you have been testifying to? Compare it with your map—you gave me [1235] the description, and I think I have it right, but I want to verify it.

Mr. HELLENTHAL.—That is, you are merely asking him if you have correctly copied the notes into your complaint, according to his way of looking at it?

Judge WINN.—Yes, sir.

A. The courses are not the same as they are on this plat; no sir—the ground is the same, however—though.

Q. What do you mean by the courses?

A. I mean that the courses of the lines are changed, although the claim is still a parallelogram, but merely the courses—you can call a line by any course; there is a slight difference here on that made as made, the courses are taken from the true meridian as determined on the ground. While we have a magnetic of $31^{\circ} 54'$ the patent notes have a variation of 30° magnetic.

Q. I have sent for the field-notes of the Lotta, and what I desire to know is whether or not this map and

(Testimony of Lloyd G. Hill.)

plat, exhibit "N," describes the Lotta claim as it is exactly on the ground. A. Yes, sir; it does.

Q. Then will that description in the complaint there—does it conform to this particular piece of ground as described on the map?

A. It does, yes, sir.

Q. I have the official survey with the field-notes here—I will give you the field-notes as the survey was made by Geo. W. Garside. I want to go into this matter of the ties up the creek, if there are any ties to which the Lotta was tied in the official survey of it—these are the notes of the Lotta?

Mr. HELLENTHAL.—We object to these notes because they are all [1236] merged in the patent and it is beside the question—the patent is deemed the official judgment of the Government and cannot be attacked.

Judge WINN.—The description of the Lotta lode claim we expect to show is exactly on the ground as it is in the patent and is in the official field-notes, except there is a mistake in these courses and distances up in the basin.

Objection withdrawn.

A. The field-notes do not show that it was tied to the monument.

Q. Does the survey of the Lotta lode claim show that it is tied to any natural object?

A. The only tie is this—that this claim is bounded on the northeast by the Taku Gold & Silver, and on the southeast by the Capital lode.

Q. Go ahead and answer the question as to what,

if anything, it is tied up to.

Mr. HELLENTHAL.—Do I understand the notes are in evidence?

By the COURT.—I do not understand they are in evidence. Mr. Hill was asked to read—to find in them what the tie was and read it. That is as far as it has gone.

Mr. HELLENTHAL.—I object to any portion of the notes going in without the whole notes.

Objection sustained.

Judge WINN.—I am going to offer that part of it, get a certified copy of that part of them * * * the whole field-notes in the case would extend over such an amount of copying that it would burden the record.

Mr. HELLENTHAL.—I have no objection to the surveyor general substituting a certified copy of these notes at any time. They may remain in the surveyor general's office and the record may show a certified copy may be placed in the record. [1237]

After discussion, the objection to the field-notes was sustained unless the entire field-notes were offered in evidence.

Mr. HELLENTHAL.—I move now whatever Mr. Hill testified to from the notes be stricken unless the whole notes go in.

Motion denied. Defendant allowed an exception.

Q. I have the patent of the Lotta which was offered in evidence in this case on yesterday. I wish you would examine that portion of it that refers to the Lotta claim and see if in the survey as made, in

(Testimony of Lloyd G. Hill.)

which the Lotta is one of the claims, if that group of claims is in any way tied up to any monument, United States monument or a hill or monument, or some object—something or that kind.

A. The tie is made from the corner of #2 of the Crown Point, Survey #90 to United States Mineral Monument No. 2, and the call is U. S. Mineral Monuments #2 bears south 65° and $37'$ east 6530.6 feet distant.

Q. Now, I will ask you to take this certified copy of the plat of the survey under which the Lotta was patented and indicate to the Court if any such tie as you have spoken of is indicated on this plat.

A. Yes, sir; that is the same tie identically that is on this plat.

Q. I will ask you if the tie that is read from the plat attached to the patent is the same as the tie indicated on this exhibit "B," which we have offered in evidence? A. Yes, sir; it is identical.

Q. Now, that is the tie, then. Is that also indicated on this exhibit "N" which you have been testifying from? [1238] [1239]

A. Yes, sir; that tie is shown on this map; yes, sir.

Q. Have you tied up any portion of the Lotta claim up there to this monument Number 2 of the Crown Point and ascertained as to whether or not the tie there is correct? A. Yes, sir; I have.

Q. I understand that this tie indicated on "N," commencing at this point Number 2 of the Crown Point and as it is on exhibit "B" and as it is on the

(Testimony of Lloyd G. Hill.)

plat that is attached to the patent, is all the same, is it?

Objected to as leading. Sustained.

Q. How do they compare?

A. The connection marked in red on this plat Corner #2 of the Crown Point and the connection shown on the exhibit "B"—

Mr. HELLENTHAL.—I want to object to this class of testimony, because the monument is tied to the Crown Point, a subsequent and independent survey and not part of the Lotta survey.

By the COURT.—If it is not coupled up in some way so it is comprehensible, it will be either stricken out or not recognized.

Mr. HELLENTHAL.—With that understanding I will withdraw the objection.

WITNESS.—(Continuing.) The connection shown in red on this plat exhibit "N" and the connection shown on exhibit "B" and the connection shown on the map attached to the patent are all the same.

Q. This Lotta is contained in this group of claims that is indicated on all three of these exhibits, is it not? A. Yes, sir; it is.

Q. And the only tie that that whole group of claims has to any [1240] other monument, is what monument?

A. The Monument Number 2 Silver Bow Basin. the land office regulations at that time only required one tie to a group of claims that were contiguous.

Q. I will ask you if you have made an actual survey and measurement of the tie that you have just

(Testimony of Lloyd G. Hill.)

been testifying concerning on the ground, and ask you if the tie as you have surveyed it from the Corner Number 2 of the Crown Point to this monument, if you have found it the same or different from what it is in these exhibits?

A. I found it different. I assisted on that. I didn't run it entirely alone on this survey, the connection. Mr. Wettrick and I made a traverse together and checked each other.

Q. When did you make them?

A. We made that sometime last November.

Q. What difference did you actually find to exist between that tie as indicated in this official map and also as it appears in this map that is in the record and is a part of the patent?

A. You are referring now to Corner #2 of the Crown Point? A. Yes.

A. I found a difference of approximately 125 feet.

Q. To the mineral monument? A. Yes, sir.

Q. Was that distance greater or smaller than was indicated on this map and plat attached to the patent?

A. The distance from the monument to the claim in the patent is greater than it really is from an actual survey on the ground. This claim would be further away from the monument if the patent were taken to locate the claim. [1241]

Q. Now, taking this number 2 corner of the Crown Point as indicated on "N" and going down the side line, or the end line, down to Corner 6 of the Lotta, following along the end line of the Crown Point,

(Testimony of Lloyd G. Hill.)

Keystone, Taku and Lotta—what, if anything, do you find about the actual measurements on the ground compared as they are in this—the difference in the width of those claims compared—how is that?

A. The length of the claims on the end line, that is, the Crown Point, the Keystone, the Taku and the Lotta, along their respective northwest end lines are very close to the patent notes. There is a slight difference because a great many years have elapsed and some were leaning.

Q. Now, I will ask you to take it for granted that the actual survey you made of this tie, you and Mr. Wettrick, from Corner #2 of the Crown Point up to this monument, is correct—the one you made, and the one that is given in the field-notes is incorrect—what difference, if any, would that make in the location of the Lotta on the ground?

Mr. HELLENTHAL.—We object as calling for a conclusion of the witness.

Objection overruled. Defendant allowed an exception.

A. It would make a difference of—it would throw the Lotta 94 feet, the side line of the Lotta, pretty near due east 94 feet—about 94 feet.

Q. Would that be down the creek or up the creek?

A. It would sorter cross the creek more—the creek runs nearly north and south through the Lotta.

Q. I will ask you if there is any other tie of the Lotta claim in the field-notes than the one you have just indicated in the deed you have just looked at

(Testimony of Lloyd G. Hill.)

and the map attached to it—the patent, I mean.
[1242]

A. Simply the tie calling for the side line of the Taku lode—in the patent, do you refer to now, or the field-notes?

Q. Yes, the patent.

A. There is no further tie to the Lotta in the patent.

Q. There is one question I omitted to ask you concerning the corner posts and stakes of the Lotta you found on the ground. I will ask you if you found any other witness corners, witness trees or anything of that kind.

A. When I assisted on the survey of the Forrest and Etta lodes in 1900 I found three trees blazed up there on what is corner #6 of the Lotta lode, and at that time I reblazed them, and those trees are still standing there within a few feet of the corner.

Q. The blaze is still to be seen on those trees?

A. Yes, sir.

Q. (By the COURT.) Are these called witness trees or monuments in the patent? A. No, sir.

Q. There is not any in the patent or the field-notes that you have discovered?

A. No, there is none in the field-notes or patent.

Q. I asked the question particularly to show that he identified it by the trees. Those trees, you say, are still there and still the blaze shows upon them?

A. Yes, sir.

Q. And how is this post as it now stands with reference to these blazed trees, in comparison to where

(Testimony of Lloyd G. Hill.)

it was when you saw it in 1900?

A. I think it is in the same place.

Q. (By the COURT.) Are they the nearest trees to the stake? A. Yes, sir. [1243]

Q. I didn't just understand what you meant by your answer when I asked you the question to take it for granted that the actual survey that you and Wettrick made of this tie from the corner Number 2 of the Crown Point up to that monument was correct, as to what effect that would have upon the Lotta claim, and of course taking it for granted that the one in the patent is wrong?

A. It would have a tendency to cross the Lotta claim 94 feet further to the west and would throw it further down the creek, down Gold Creek.

Judge WINN.—That is all at this time.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. It would throw it further to the west, you say?

A. Yes, sir.

Q. Didn't you say a moment ago that it would throw it to the east?

A. Well, that was just simply an oversight, in direction.

Q. You meant to the west.

A. It is evident it is to the west; it couldn't be to the east.

Q. You said in answer to a question it would throw it to one side 94 feet. Is that right? A. Yes, sir.

Q. Not down the creek, but to one side—slide it

(Testimony of Lloyd G. Hill.)

across the creek and in sliding it across the creek it would take in a certain portion of the creek.

A. It necessarily would have to, but the creek is almost parallel with the line.

Q. But the claim itself would be slid across the creek?

A. Yes, but it would take in further down the creek than it does at present. [1244]

Q. How much further?

A. It is pretty hard to determine that.

Q. You can't determine that?

A. You could by drafting it out. I can't say here how much further.

Q. You know it would throw it 94 feet to the west rather than the east?

A. Almost, because the connection there is almost due east and west to the monument.

Q. How far is the mineral monument from the Lotta monument #2 approximately—about 2 miles, is it not?

A. Oh, no; the line is about 7,200 feet; that is a direct line—of course you can't run a traverse line that distance.

Q. In running a traverse line you would have to run about two miles? A. Yes, sir.

Q. Have to survey about two miles to get your distance? A. Yes, sir.

Q. And have to rely upon your instrument in getting that survey? A. Yes, sir.

Q. And in surveying that you would run to a corner of the Crown Point? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. Then you assume the Crown Point is accurately located on the ground, that it is full size and that sort of thing? A. No, you run the Crown Point.

Q. Before you can run from the Crown Point to the Lotta you have to locate the Crown Point?

A. Yes, sir. [1245]

Q. And after you run the Crown Point out—what do you run out, the Taku Gold & Silver?

A. The Keystone.

Q. And after you run the Keystone out, then you run what out?

A. The Crown Point and Taku Gold & Silver and then the Lotta.

Q. The Lotta is not tied to the mineral monument in that patent note, is it? A. No.

Q. It is tied to the Taku Gold & Silver?

A. Yes, sir.

Q. And the Taku Gold & Silver is tied to the Keystone, is it? A. Yes, sir.

Q. And the Keystone is tied to the Crown Point?

A. Yes, sir.

Q. And the Crown Point is tied to the mineral monument? A. Yes, sir.

Q. The Lotta is number 87? A. Yes, sir.

Q. The Taku Gold & Silver Number 88?

A. Yes, sir.

Q. The Keystone Number 89? A. Yes, sir.

Q. And the Crown Point 90? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. And the Lotta itself is not tied to the mineral monument at all? A. No, sir.

(Testimony of Lloyd G. Hill.)

Q. The Lotta is not tied to the mineral monument but the Crown Point is tied to the mineral monument—that is right? A. Yes, sir.

Q. The Lotta itself is not? [1246]

A. No, only indirectly—to a surveyor it would be tied; they look at it and figure in fifteen minutes the connection to the monument.

Q. By figuring, you mean figuring from the Crown Point to the Lotta? A. Yes, sir.

Q. But the Lotta itself is not tied to the mineral monument? A. No.

Q. It is merely a question of figuring to find out where the Lotta is?

A. From the field-notes, from the various claims intervening between the tie on the Crown Point and your corner of the Lotta.

Q. You figure, then, to the Lotta? A. Yes, sir.

Q. Look at that map and tell me if there is not some tie to a natural object on that map. Examine it closely.

A. Yes, it is very indefinite. It is marked here, I believe, Gold Creek, the intersections of the various lines it goes through.

Q. How far is post Number 5 from the creek on that plat?

A. Post #5 is marked to the northeast of corner #5 1200 feet.

Q. How far is it on your plat?

A. On my plat it is marked 693 feet.

Q. Your plat, then, does not correspond with the patented notes in that regard, does it? A. No sir.

(Testimony of Lloyd G. Hill.)

Q. Did you find any other ties there? I call your attention to the upper corner there. See whether it is not tied to the creek there, too. A. Yes, sir.

[1247]

Q. How many feet to the creek?

A. 75 feet, I think.

Q. Look closely and you will see it is 40.

A. 40 feet.

Q. Look at your chart and see how far that post is—what is the number of that post?

A. Post Number 2.

Q. See how far post #2 is from the creek according to your chart.

A. It is right in the creek practically.

Q. Then, your chart in that regard is not correct, is it—when I say “your chart,” I refer to exhibit “N”—exhibit “N” is not correct in that regard, is it?

A. Well, it does not compare with this plat here which has been drawn in the record; that is not the original patent plat.

Q. Does exhibit “N” check with the plat that is offered in evidence as part of the patent? A. No.

Q. If that plat is the plat of the Lotta claim, then the Lotta claim is not correctly platted on exhibit “N,” is that true—yes or no?

A. That map is incorrect I think.

Q. I say if this map is correct as a plat of the Lotta claim, then the Lotta claim is not correctly platted on your plat exhibit “N”—isn’t that true? If that plat which is offered—

(Testimony of Lloyd G. Hill.)

A. Well, the Lotta might not be correctly platted, but the creek—

Q. If that plat which is offered as part of the patent shows [1248] stake #2 of the Lotta as being 40 feet from the creek which it does, does it not?

A. Yes, sir.

Q. Then exhibit “N,” your map, does not correctly plat the Lotta with reference to stake #2, in accordance with the map that is offered as part of the patent? A. No, sir.

Q. Isn't that true? A. Yes; that is true.

Q. Stake Number 2 on your plat is in the centre of the creek? A. Yes, sir.

Q. The testimony that you gave, then, when you said that there were no other ties in this chart is erroneous in that regard, is that not true?

A. I supposed that you meant definite ties.

Q. The ties that would check with your surveys?

A. No; ties that you could commence from—I believe you can't commence from the creek.

Q. Ties that could be moved, ties that could be more readily moved than a creek?

A. No; a creek is the most movable thing in the world; it can be switched 200 feet.

Q. The creek as it crosses the Lotta claim and before it enters the Lotta claim, flows through a narrow rocky gorge?

A. It flows through a comparatively narrow channel; yes, sir.

Q. A channel that cannot be changed—is not that true? A. No, sir.

(Testimony of Lloyd G. Hill.)

Q. It can't be entirely changed by erosion.

A. It can be changed.

Q. Earthquakes may change it? [1249]

A. No, it can be changed by high water or low water.

Q. How high is that channel there, that rock gorge?

A. It varies from 25 to 40 or 50 feet in width.

Q. How wide is it at this point opposite stake #2?

A. Opposite stake #2 it is probably 25 or 30 feet in width, perhaps 40.

Q. The creek has then 25 or 30 feet to flow through? A. Yes.

Q. Before it reaches the rocky precipitous bank?

A. Yes, sir.

Q. And each side of that channel, 25 to 30 feet wide, is a rocky precipitous bank that rises up a large number of feet?

A. Yes, rather steep—not rocky, though. It is sliderock and gravel.

Q. How high does it rise?

A. It rises up to the summit of Mt. Juneau.

Q. Clear up the mountain? A. Yes, sir.

Q. Many hundred feet high?

A. Many hundred feet.

Q. The creek flows through that kind of a gorge almost the entire distance across the Lotta?

A. Pretty near—it widens out in several places.

Q. And narrows up again?

A. Yes, narrows again.

(Testimony of Lloyd G. Hill.)

Q. Some places it is not over 15 feet wide?

A. Twenty-five feet wide is the narrowest place, I know.

Q. And that is about the average width of the gorge through which the creek flows across the Lotta claim? A. Yes, sir. [1250]

Q. And it can shift within that 25 feet from one side to another—isn't that true, at high water?

A. It varies.

Q. When it gets to the edge of that 25 feet it can go no further because it is up against the rocky bank, isn't that true, either way? A. Yes, sir.

Q. It only has the 25 feet within which to shift?

A. Yes, sir.

Q. There couldn't then be more of an error in the creek—that is, the creek couldn't shift, more than 25 feet?

A. You are referring now to stake No. 2?

Q. I am referring to stake No. 2 to which you have just testified the gorge was about 25 feet wide.

A. Yes, it couldn't shift much over I wouldn't say probably 25 to 30 feet or 40 feet, I made that answer general.

Q. Your stake is in the middle of the creek?

A. Yes, sir.

Q. It is standing there now?

A. No, I don't think so—that stake has not been found; I have not seen that stake for years as I testified.

Q. You know the courses given in this patent?

A. I think so; yes, sir—the Lotta patent is it?

(Testimony of Lloyd G. Hill.)

Q. Yes, the Lotta patent—87? A. Yes, sir.

Q. You begin at Number 1, don't you?

A. Yes, sir.

Q. What is the first course given in the patent?
Take the book—what is the first course given in the patent there?

A. The first course is north $56^{\circ} 15'$ east 150 feet.

[1251]

Q. What is the course given on exhibit "N"?

A. The course on exhibit "N" is north $58-23$ east.

Q. That course, then, doesn't correspond with the course given in the patent? A. No, sir.

Q. What is the next course given in the patent?

A. Second course south $33^{\circ} 45'$ east.

Q. What is the course given on exhibit "N"?

A. The course given on exhibit "N" is south $36-31$ east.

Q. That course doesn't correspond with the course given in the patent either? A. No.

Q. What is the distance given in the patent between those two corners? A. 1500 feet.

Q. What is the distance given in the patent between corners Number 1 and 2? A. 150 feet.

Q. What is the distance on your exhibit "N," between 1 and 2? A. 150 feet.

Q. It is 150 feet? A. Yes, sir.

Q. What is the distance on exhibit "N" between corners Number 2 and 3?

A. In the patent or on my map?

Q. The patent first? A. 1500 feet.

Q. How much on your map? A. It is 1526 feet.

(Testimony of Lloyd G. Hill.)

Q. That line doesn't correspond as to distance either, then? A. It is a little longer. [1252]

Q. 26 feet longer? A. Yes, sir.

Q. And off how many degrees on the course?

A. Well, it is off one degree I think.

Q. Now, take the course from stake Number 3 to stake Number 4—what is the course given in the patent? A. The course is south $56^{\circ} 15'$ west.

Q. How many feet? A. It would be 150 feet.

Q. What is the course given on exhibit "N"?

A. It is south $57-53$, 140.38 feet.

Q. That doesn't correspond then either?

A. No, sir.

Q. What is the distance given on exhibit "N"?

A. 140.38.

Q. That then doesn't correspond with the notes in the patent? A. No.

Q. Neither as to course or as to distance?

A. No, sir.

Q. What is the next course given in the patent?

A. The next course is a continuation of that line south $56-15$ west, 150 feet.

Q. What is the course and distance on your exhibit "N" to correspond to that?

A. The corresponding course is $58-23$ south, west 144.9.

Q. That doesn't correspond with the course either?

A. No, they are all a little shorter than the patent.

Q. It doesn't correspond as to distance either, does it? A. No.

Q. That is short as to distance? A. Yes, sir.

[1253]

(Testimony of Lloyd G. Hill.)

Q. And the other is short as to distance?

A. Yes, sir.

Q. And the previous one is long as to distance?

A. Yes, sir.

Q. The trifle of 26 feet? A. Yes, sir.

Q. What is the next course given in the patent?

A. The next course is north 33-45 west 1500 feet.

Q. How does that check up with your exhibit "N"? A. Mine is north 31-36 west, 1526 feet.

Q. Exhibit "N" doesn't correspond with the patent course, then? A. No.

Q. And the distance is 26 feet greater than the distance given in the patent? Is that right?

A. Yes, sir.

Q. What is the next course in the patent?

A. The next is north 56-15 east 150 feet.

Q. What is the course on exhibit "N" to correspond with that?

A. The course on exhibit "N" there is north 58-24 east 140.9.

Q. That doesn't correspond, then, with the patent either as to course and distance?

A. That is shorter than the patent.

Q. And doesn't correspond as to course?

A. Not quite.

Q. Now, Mr. Hill, this exhibit "N" is made with reference to certain stakes that are situated upon the ground, is that correct? A. Yes, sir.

Q. In 1898 you first saw such stakes on the southerly line of the Lotta claim? [1254]

A. Yes, sir, I did.

(Testimony of Lloyd G. Hill.)

Q. You saw in that year three stakes there, didn't you? A. Three stakes.

Q. What were they?

A. One was stake #6 at the northwest corner of the Lotta; another stake was a Forrest stake at the intersection of the Forrest with the west side line of the Lotta and the other was stake #5 at the south-east corner of the Lotta.

Q. That was in 1898 you saw those three stakes?

A. Yes, sir.

Q. Number 5, Number 6 and a stake which is situated on that line drawn between 5 and 6—that is a Forrest stake? A. Yes, sir.

Q. A witness stake of the Forrest lode?

A. Yes, sir.

Q. You are sure they were there in 1898?

A. Yes, sir.

Q. Each one of these three stakes? A. Yes, sir.

Q. What was the condition of stake Number 5?

A. Stake Number 5—I couldn't go into minute details; it was a stake 2x4 about 3½ feet long in a mound of rock.

Q. Painted? A. Yes, sir.

Q. Painted white? A. Painted white.

Q. Black figures on it?

A. Black figures on it in paint.

Q. And then painted? A. Yes, sir.

Q. Pretty well preserved? [1255]

A. Yes, it was very well preserved at that time.

Q. What was the condition of the Forrest stake?

A. The Forrest stake was not so well preserved—

(Testimony of Lloyd G. Hill.)

that was the same kind of a stake—2x3 it was.

Q. What was the condition of this corner?

A. That was the same stake—a similar stake.

Q. 2x4?

A. 2x3—set in the ground and they were all marked with paint and painted white.

Q. With a black legend on it? A. Yes, sir.

Q. Black figures? A. Yes, sir, black figures.

Q. Marked to indicate what the corner was?

A. Yes, sir.

Q. And marked Corner Number 6 of the Lotta?

A. Yes, sir.

Q. No other marks on it?

A. Corner Number 6 and I think U. S. S. 87 Lotta.

Q. No other marks on it? A. Yes, sir.

Q. What were the other marks?

A. Etta Corner 2 U. S. Survey 258.

Q. That was back in 1898? A. Yes, sir.

Q. You are sure that was in 1898 when you first came there? A. Yes, sir.

Q. Yet you know that the survey for the Etta and the Forrest were not made until 1900, don't you?

A. No, they were made long before that, in 1893; there have [1256] two surveys been made of that group, two official surveys.

Q. Don't you know as a matter of fact that no survey was ever made on the first application for a survey?

A. The survey was made, yes, sir; the plats and field-notes were gotten up and I have them in my office at present.

(Testimony of Lloyd G. Hill.)

Q. Were they ever returned to the surveyor general's office? A. I think not.

Q. Is that Forrest stake the same stake that is there now? A. No, it is not.

Q. Is the Etta stake the same stake that is there now? A. No, sir.

Q. All been changed?

A. Those were changed when the real official survey was made of the Survey 545, that is the Dora group.

Q. That was in 1900? A. Yes, sir.

Q. In 1900, then, those stakes you spoke of you saw there in 1898 were both changed, is that true?

A. I couldn't say positively whether they were taken up or placed alongside; I think they were placed alongside.

Q. Then there would be two stakes?

A. Yes, sir.

Q. You have not seen but one stake there since, have you? A. No.

Q. Then there were new stakes put in?

A. Yes, sir, there were new stakes put in.

Q. Then the natural consequence is the old stakes must have been taken out?

A. Yes, they are not there.

Q. The stakes, then, that are now in the ground are the stakes put there in 1900? [1257]

A. Yes, sir, in reference to those two points, in reference to corner #5 the original stake is still there.

Q. Which original stake?

(Testimony of Lloyd G. Hill.)

A. The original stake I saw in 1898.

Q. That stake is there? A. That stake is there.

Q. What is the survey number of that first survey? A. 258.

Q. What is the survey number of the second one? A. 545.

Q. Isn't that stake marked 545? A. Yes, sir.

Q. It is not marked with the original number then? A. No, sir.

Q. If that had been the stake of the original survey, would it not have the number of the original survey?

A. Well, it has been changed—we are speaking now with reference to stake Number 6?

Q. I am talking of stake Number 5?

A. 5—there is no marks on that at all.

Q. Nothing on that?

A. No, sir, that is just a big stake there—there isn't much on it—a stake 5 inches square.

Q. What is on it? A. I can't recollect now.

Q. Is there anything on it?

A. I don't think there is—I don't think there is anything on it.

Q. You don't think there is a mark on it to indicate what it is? A. No, sir.

Q. Just a stake? A. Yes, sir. [1258]

Q. And way back in 1898 that stake was there?

A. You are speaking of Corner 5 now?

Q. I am speaking of the stake at the intersection of the Forrest and Lotta as you have platted it on exhibit "N."

(Testimony of Lloyd G. Hill.)

A. Back in 1898 there was a different stake there.

Q. There was a different stake there?

A. Yes, sir.

Q. The stake that you saw in 1898, is that the stake that is still there? I mean now the Forrest stake.

A. No, sir, it was not.

Q. A different stake has been put there since?

A. A different stake has been put there since.

Q. When was a different stake put there?

A. A different stake was placed there in 1900 on the Forrest.

Q. By whom? A. I placed that there myself.

Q. The stake, then, that stands on what you claim to be the southerly side line of the Lotta, at the point where it intersects with the Forrest, is the stake that you placed there in 1900?

A. At the time the survey was made.

Q. Of the Forrest? A. Yes, sir.

Q. And the stake that you have marked as Corner Number 6 of the Lotta, is that the same stake that you saw there in 1898?

A. No, sir.

Q. When was that stake placed there?

A. That stake was placed there at the same time that the Forrest stake was placed there, when the survey was made of the Etta claim. [1259]

Q. And the stake that you set at the intersection at the time of the Forrest survey is still the same stake that is now in the ground, the one set there in 1900?

A. The same stake is now there.

Q. And the stake you set as Corner Number 6 of the Lotta, that is the point where 6 is as you platted

(Testimony of Lloyd G. Hill.)

it here, was set by you in 1900 at the time you surveyed the Etta claim?

A. Yes, sir, the old original stake was there at that time.

Q. It was there when you set the new one?

A. Yes, sir.

Q. You set the new one in the ground and pulled it up and threw it out?

A. I don't know what I did with reference to the old stake.

Q. You didn't think it was important enough to know what happened to the old one since you put a new one in its place?

A. I know it was pretty well rotted and wouldn't stay there long anyway.

Q. It was in such a state of preservation that it was necessary to put a new stake in its place in order to keep it there anyhow? A. Yes, sir.

Q. It rotted off in the ground?

A. Yes, sir.

Q. And you put a new stake there? A. Yes, sir.

Q. That was in 1900? A. Yes, sir.

Q. That is a corner stake of the Etta claim—and that corner stake 6 that you then placed in the ground on the Etta claim is still there?

A. Yes, sir. [1260]

Q. The same stake? A. Yes, sir.

Q. On the identical spot? A. Yes, sir.

Q. You were a witness before Judge Lyons last fall where this same case was up or this same matter was up on an application for a temporary injunction,

(Testimony of Lloyd G. Hill.)

were you not? A. I was.

Q. I will ask you if you testified in this language: "How many posts did you find upon the Lotta claim?" That is a question I asked you and you answered in response to the questions I asked you at that time in the hearing before Judge Lyons upon the application for a temporary injunction in this matter—not the same case but a similar matter—you know what I refer to? A. Yes, sir.

Q. You answered—"I found two posts. Q. What posts were they? A. That was Corner Number 5, southwesterly corner and I found a witness corner to Corner Number 6, below the corner. The original Corner Number 6 was up on a steep mountain side and had gone out"—Did you so testify?

Judge WINN.—I want it confined to some certain time—he should specify the time Mr. Hill saw these particular stakes.

Q. In response to a question I asked you which was as follows:

"I will ask you whether or not you ever surveyed the Lotta claim on the ground? A. I have.

Question: What stakes are there on the Lotta claim? Describe the claim and corners.

A. The Lotta Corner Number 5, which is identical with the southwesterly corner, is standing there and there is a pole there with a white flag on it in plain sight from the road across the creek, and I think the corner [1261] the northwesterly corner of the Lotta is standing

(Testimony of Lloyd G. Hill.)

right below the road, which is a very little piece below the road above Gold Creek. Those two stakes are standing and the main thing to determine is the position of the notice of water location and the position of the work where the attempted diversion was made, was to find the southwesterly side line of the Lotta claim between corners Number 5 and 6.

Question: Did you do that? A. I did.

Question: Describe what you found, just what did you do?

Answer: Running that line there I found that the water location was within the boundaries of the Lotta lode, approximately 150 feet, within a foot or two.

Question: I will ask you, Mr. Hill, if that was from actual measurement made upon the ground?

Answer: That was from actual measurement and angles taken. I had a transit.

Question: How many posts did you find upon the Lotta claim? Answer: I found two posts.

Question: What posts were they?

Answer: That was Corner Number 5, southwesterly corner, and I found a witness corner to Corner Number 6, below the corner. The original Corner Number 6 was up on a steep mountain side and had gone out"—

Did you so testify?

A. Yes, sir.

Q. Now, at that same hearing and that same time,

(Testimony of Lloyd G. Hill.)

did you testify as follows:

“Q. When did you put those stakes there?

A. I put the stakes you have reference to there, marked Forrest about six years ago, at the time the official survey was made.

Q. And you put that stake in the ground?
[1262] A. Yes sir,

Q. That is not the original patent stake?

A. It is in the place where the original patent stake was taken up; this was replaced, because the original patent stake was a small stake which was a 4-inch stake—”

Did you so testify?

A. I think I must have if it is there.

Q. Are you now mistaken in your testimony?

A. No, sir, I was mistaken in that.

Q. This is wrong?

A. Yes, sir—I was rushed into that thing and was brought up here and couldn't testify to it, in regard to it, offhand and the dates.

Q. Did you testify as follows:

“Q. Did you take the official patent stake out?

A. I don't know; when I took it up I put it alongside, but the end in the ground had rotted away and the stake probably just disappeared.

Q. Which stake was that?

A. That was a stake which would be a witness stake to Corner Number 6 and also a witness to Lotta 6.

Q. It was not at the corner?

A. No, sir, it was not at the corner; Mr. Ebner

(Testimony of Lloyd G. Hill.)

didn't want to put it there because it wouldn't stay.

Q. It is a witness corner merely to where the true corner would be?

A. It was a witness corner merely to the true corner.

Q. Was that the corner situated alongside the Cape Horn road?

A. Not situated alongside the Cape Horn road, but along the Basin road, way back from Cape Horn—"

You [1263] testified to all these things?

A. I did.

Q. You were mistaken at the time you delivered this testimony?

A. I didn't have preparation enough, I guess—I must have in regard to those stakes.

Q. Were you mistaken with reference to the stakes you testified to, not being in the ground—Corner Number 6?

A. I didn't go up to corner Number 6 at that period because the witness corner was on the line. You can't see from corner 6 to 5 because of an intervening bluff, and I stood there at the Basin road where I had the line defined from one stake to another.

Q. You were mistaken when you stated that Mr. Ebner wouldn't allow the corner to be placed in the ground because it wouldn't remain there—is that a matter of mistaken recollection?

A. Yes, I guess that is.

(Testimony of Lloyd G. Hill.)

Q. That is a matter of mistaken recollection?

A. Yes, sir.

Q. And the whole matter of Corner Number 6 not being in the ground at the time you here testify is a matter of mistaken recollection also?

A. I think so, yes, sir.

Thursday, May 25, '11—Morning Session.

Q. I hand you here the original field-notes of the Lotta Survey Number 87 as they are lodged in the surveyor general's office, they being the same notes concerning which you testified on yesterday—examine them and see if they are the same? [1264]

A. Yes, I think they are.

Q. They are the same? A. Yes, sir.

Q. On yesterday I understand you testified that those notes did not contain a tie to a natural object—is that true? A. Yes, sir.

Q. I will now ask you to re-examine those notes more carefully and see if you did not make a mistake on yesterday in your testimony in that regard?

A. No, sir, I think I examined them; I said it was bounded on the northeast by the Taku Gold & Silver, on the southeast by the Capital. Those are the only ties that I would consider ties.

Q. Please read those notes just as they are given?

A. Beginning at Post Number 1 U. S. Survey 87; first course, N. 56-15 east 150 feet, post marked No. 2 U. S. Survey Number 87; thence second course S. 33-45 east 50 feet, Gold Creek.

Q. That is the second course?

A. Second course.

(Testimony of Lloyd G. Hill.)

Q. Gold Creek you wouldn't consider a natural object?

A. Yes, sir, Gold Creek is. Thence third course S. 33-45 E. 1500 feet, post marked No. 3 U. S. S. No. 87; thence fourth course S. 56-15 west 150 feet, post marked No. 4 U. S. S. No. 87; whence original location notice bears north 33-45 west 300 feet; thence fourth course south 56-15 west 300 feet, post marked No. 5 U. S. S. No. 87; thence N. 33-45 west 1000 Gold Creek, 1500 feet to post marked No. 6 U. S. S. No. 87.

Q. Gold Creek at that point is also a natural object, is it not?

A. Gold Creek is, yes, sir. [1265]

Q. What is the next course?

A. The next course is north 56-15 east 150 feet, post marked No. 1 U. S. S. No. 87, the place of beginning.

Q. That is all there is to the notes?

A. Containing an area of 10.33 acres; this claim is bounded on the northeast by the Taku Gold & Silver and on the southeast by the Capitol lode claim. That is the end of it.

Q. Nothing further in here? A. I think not.

Q. Now, Mr. Hill, you know the way the claims are numbered in the surveyor general's office generally, don't you? A. Yes, sir.

Q. The surveys start there with Number 1 and come on up? A. Yes, sir.

Q. Number 1 being the first survey made in the district? A. No, Number 37 is the first survey.

Q. They didn't have a number 1? A. No, sir.

(Testimony of Lloyd G. Hill.)

Q. Commencing at Number 37? A. Yes, sir.

Q. Number 37, then, is the first survey made in the district? A. Yes, sir.

Q. And Number 38 is the next survey?

A. Yes, sir.

Q. And so on up the line? A. Yes, sir.

Q. Number 300 would be subsequent to Number 200—that is right, is it not? A. Yes, sir.

Q. Then, Survey Number 415, or whatever it is, of the Forrest, would be subsequent to the Lotta, which is Number 87—is [1266] that not true?

A. Well, where the numbers of the surveys are close together, why, although a survey might have a larger number, the actual survey on the ground need not necessarily be made at any given time.

Q. But that is the way they are numbered in the surveyor general's office?

A. The order for the survey; yes, sir.

Q. When an order is issued for Number 87 a surveyor goes out and surveys Number 87; then subsequently the next man comes along and gets the next number that is open—isn't that the way of it?

A. Yes, sir.

Q. If Survey No. 87 is once given to a surveyor, it is not given to a subsequent surveyor?

A. No, sir.

Q. The next man gets 88? A. Yes, sir.

Q. And the next one 89? A. Yes, sir.

Q. And the next 90? A. Yes, sir.

Q. And when the surveyor goes on the ground he has orders for half a dozen surveys, different num-

(Testimony of Lloyd G. Hill.)

bers? A. Yes, sir.

Q. And commences with the lowest number first, does he not?

A. He does at present, but it didn't apply in the early days.

Q. If you got a number of surveys to execute, Mr. Hill, you would commence with the first survey first, would you not? A. No, sir, not necessarily.

Q. You would not? A. No. [1267]

Q. You would commence with the last survey first, would you?

A. It would all depend upon the conditions and the situation of the claims.

Q. Is it not a fact that these surveys were made commencing with the first survey first?

A. No, sir.

Q. Is that not true? A. No, sir.

Q. I hand you here the patent of the Lotta and those various claims as offered in evidence—look at it please?

A. Yes, I have examined them, I think.

Q. According to that patent, isn't the Lotta survey first, No. 87?

A. According to this patent it is merely recorded first—I couldn't say at all.

Q. Those notes don't tie to the Taku Gold & Silver, do they, in the notes there? A. In the patent?

Q. In the patent, just as you read it there before you?

A. No, sir, the notes of the Lotta don't tie to anything in here, the patent.

(Testimony of Lloyd G. Hill.)

Q. The notes of the Taku Gold & Silver do tie to the Lotta, do they not?

A. In one instance they do, yes, sir.

Q. The notes of the subsequent survey—that is the Keystone, is it not?

A. That is the next one, 89.

Q. They do tie to the Taku Gold & Silver, do they not? A. Yes, sir.

Q. The notes of the Crown Point tie to the Keystone, do they not? [1268]

A. The names of the claims are not given, but merely the number of the survey—yes, sir.

Judge WINN.—We object to this as incompetent, irrelevant and immaterial for any purpose whatever
* * * I believe this evidence is simply encumbering the record.

By the COURT.—We haven't developed what the point is yet—objection overruled. Plaintiff allowed an exception.

Q. The notes of the Crown Point tie to the Keystone, do they not? A. Yes, sir.

Q. The Lotta is the only claim in that patent that does not tie to any of the others—isn't that true?

A. I think so, yes, sir.

Q. As a surveyor, you know that you couldn't very well tie to a survey that had not yet been made, could you? A. That question again, please?

Q. You know as a surveyor that you cannot survey a claim and tie it to a claim that does not exist?

A. No, sir, you could not; the survey has nothing to do with it—you can tie it to a location.

(Testimony of Lloyd G. Hill.)

Q. But to a survey that does not exist?

A. No, you couldn't do it.

Q. In other words you couldn't survey No. 88 and tie it to 87 unless 87 had already been surveyed, could you? A. No, sir.

Q. Then the Lotta was surveyed before the Taku Gold & Silver, was it not, if those notes in the patent are correct? A. No, sir.

Q. It was not? A. No, sir.

Q. Look at the notes again? [1269]

A. That is merely the record. The first survey of the claim in that case would invariably be the Crown Point, because there is the basis for your entire calculation; your course and distance is first given from the U. S. Monument Corner No. 2 of the Crown Point; that ties it up—that ties up then this one survey; altho it is a group it is included in one survey.

Q. The Lotta is not tied to the mineral monument, is it, in the patent notes? A. No, sir, it is not.

Q. The Lotta is not tied to anything in these patent notes except the creek, is it? I am asking about the notes in the book, the Lotta patent as actually issued? A. I answered that question.

Q. How did you answer it?

A. I said it was not.

Q. You said it was not tied to anything except the creek. A. It was not.

Q. I again hand you the official field-notes of the U. S. surveyor general's office and ask you to look at them—what is the date of the Lotta survey in those notes? A. September 17, 1888.

(Testimony of Lloyd G. Hill.)

Q. What is the date of the Taku Gold & Silver survey in those notes?

A. September 17, 1888—that is the same date.

Q. I now ask you to look on the first page of those notes under Survey No. 88 and tell me what the date of Survey No. 88 is as indicated on that map—if it is not September 18th instead of 17th?

A. I don't know—it is 17th it looks to me,—I should think it [1270] was 17th—it looks as though it may have been tampered with.

Q. Does that look to you like a 17?

A. That is Survey 89—that is not Survey 88.

Q. Survey No. 89 then is made on September 18th here? A. Yes, sir.

Q. And both Survey No. 87 and Survey No. 88 bear the date of September 17th? A. Yes, sir.

Q. Survey No. 87 occurs first in these notes, does it not? A. It does, yes, sir.

Q. And that is given as being on the 17th of September, is that right? A. Yes, sir.

Q. Then, Survey No. 88 occurs? A. Yes, sir.

Q. That is also given as the 17th?

A. Yes, sir.

Q. That is the one, you say, looks as though it had been tampered with? A. Yes, sir.

Q. And the next one is 89—that is on the 18th, the following day? A. Yes, sir.

Q. Does that look as though it had been tampered with? A. No, sir, it does not.

Q. Now, look at Survey No. 90—see if you can find it? A. Yes, sir—field-notes of U. S. Survey 90.

(Testimony of Lloyd G. Hill.)

Q. What was the date of that survey?

A. September 18, 1888.

Q. The same day 89 was made?

A. Yes, sir. [1271]

Q. Two days were consumed in making the survey? A. Yes, sir.

Q. The first two days were spent on the lower claims, 87 and 88? A. Yes, sir.

Q. And the next two days on 89 and 90?

A. Yes, sir.

Q. Your testimony then that the survey was made by commencing at the Crown Point is in error in that regard—is that not true?

A. No, sir, the statement I made is correct. As a matter of fact, I know that there had been prior surveys made on—

Q. You know as a matter of fact that September 18th comes before September 17th—is that true? (Question withdrawn.)

Judge WINN.—I move to strike out all this evidence that has been gone over—simply to shorten the record—as incompetent, irrelevant and immaterial.

Motion denied. Plaintiff excepts.

Q. Now, Mr. Hill, according to these field-notes, then, the Lotta claim is surveyed with reference to Gold Creek—is that true?

A. Gold Creek is mentioned in the field-notes of the survey, yes, sir.

Q. Stake No. 2 is 50 feet from Gold Creek according to those field-notes? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. The courses in the field-notes are identical with the courses given in the patent, are they not?

A. They are.

Q. And differ approximately two degrees from the courses given by you on your map, exhibit "N"—is that not true?

A. That is true, yes, sir. [1272]

Q. Your map, exhibit "N," then, does not jibe with the field-notes of the surveyor general's office in regard to the matter of courses? A. No, sir.

Q. By about two degrees—is that true?

A. Yes, sir.

Q. If those field-notes are right, your map is in error to that extent?

A. No, sir—that is where I want to explain; you don't understand.

Q. You say, no, sir? A. No, sir.

By the COURT.—Let him make his explanation.

The WITNESS.—It doesn't make a particle of difference what you call that course, you may call that course north, the end lines of the Lotta—that wouldn't affect the location; it is simply a parallelogram and it does not affect the ground in question. The area is the same, absolutely the same—it is simply a question of what course you should say; the magnetic course is 32° off the true course, practically, in this section.

Q. Is that your explanation?

A. Yes, sir—my explanation is— This is the idea I want to impress upon you that the ground as it is described in the patent is identical with the ground

(Testimony of Lloyd G. Hill.)

that is shown on this plat in regard to the Lotta location, although the courses may differ. I run on the variation of 31-54; Garside assumes a variation of 30°; if I should sight for his variation and run a survey over there I would get identically the same courses he gets and that are described in the patent. [1273]

Q. You mean to tell me that if you start at a given point it is immaterial in what direction you go, you will just get the same piece of ground anyhow?

A. It is immaterial what you call that direction, what you may call it by a course.

Q. You mean to say it is immaterial—if you start at a given point and actually go south, you would still be going south even though you said you were going north—is that what you mean to say?

A. Yes, sir.

Q. But assuming that the man that surveyed for the patent actually went as he said he did—do you understand that? A. Yes, sir.

Q. Do you know— Assuming that the man that surveyed the patent actually went as he said he did—he wouldn't go by your lines, would he?

A. Absolutely.

Q. Then, a man going north goes in the same direction that a man goes going south?

A. You can call north south and survey a certain piece of ground and have the margin changed diametrically.

Q. What is the course given in the patent?

A. The course of the said lines is 33-45.

(Testimony of Lloyd G. Hill.)

Q. And what is the course given by you?

A. 31-36.

Q. Now, a man that starts from point No. 2 and takes the course in the patent and another man that starts from point No. 2 and takes the course given by you on your plat here, will travel the same course, is that true?

A. When you have two fixed points you are running for, yes, sir. [1274]

Q. Explain that some more.

A. There is a post No. 5 and a post No. 6 of the Lotta on the ground; in surveying that claim it makes not a particle of difference whether I call that course 33-45 or 10-45 or 15-45 or 5-45—I can give it an assumed course.

Q. Providing stakes No. 5 and 6 are the actual stakes of the Lotta? A. Yes, sir.

Q. Provided that is true? A. Yes, sir.

Q. And that they are the corners? A. Yes, sir.

Q. If you once know the corners you can run a line between those corners without knowing the course? But if you didn't know those corners, didn't know those stakes, it would be very different, wouldn't it?

A. Yes, sir, it would.

Q. Now, then, disregarding those stakes on the ground—I am not questioning that your plat shows the Lotta survey with reference to those stakes.

A. Yes, sir.

Q. But it does not show the Lotta survey with reference to the courses and distances given in the pat-

(Testimony of Lloyd G. Hill.)

ent, does it?

A. The course is different, as I said before.

Q. And the distances are different?

A. The distances are slightly larger on this plat than in the patent.

Q. 26 feet longer, is it not? A. Yes, sir.

Q. And the same is true with reference to the field-notes of [1275] the surveyor general's office?

A. Yes, sir.

Q. Now, commencing at Corner No. 2, taking the course indicated in the field-notes of the surveyor-general's office, running to the creek, you would run 50 feet along that course, would you not?

A. Yes, sir.

Q. Commencing at corner No. 2 on your plat, exhibit "N," you start in the middle of the creek, don't you?

A. Pretty near, it is right on the edge of the creek—Yes, it is nearly the centre of the creek. This plan may be exaggerated a little, it is impossible to run out a creek—it is never done; you sketch in more or less the topography.

Q. Corner No. 2 then on your plat, exhibit "N," with reference to the distance from the creek varies 50 feet from Corner No. 2 as given in the notes of the surveyor general's office?

A. It does approximately, yes, sir.

Q. You know a surveyor, when he surveys a non-navigable stream surveys the thread of the stream?

(Testimony of Lloyd G. Hill.)

A. Yes, sir.

Q. And when you testify, you testify with reference to that knowledge—when you say the creek it is the middle of the creek, of course? A. Yes, sir.

Q. Any surveyor knows that, doesn't he, or is supposed to know it? A. Yes, sir.

Q. Corner No. 2 according to the notes in the surveyor general's office is 50 feet from the centre of the creek?

A. Yes, sir, according to those notes it is. [1276]

Q. And according to your plat, exhibit "N," Corner No. 2 is just about in the centre of the creek?

A. Yes, sir.

Q. Corner No. 5 according to the surveyor general's notes is one thousand feet from the centre of the creek, is it not?

A. It is 1200 feet on that map.

Q. I am asking you about the surveyor general's notes—how far is it from the centre of the creek?

A. Yes, sir—it is 1,000 feet in the notes.

Q. How far is Corner No. 5 from the centre of the creek, according to your plat exhibit "N"?

A. It is 959 feet.

Q. You are off how many feet?

A. I am off the difference between—well, I am off 41 feet.

Q. Look at that again, is that 900 or 600?

A. It is 959 from Corner No. 6, 693 feet from Corner No. 5.

(Testimony of Lloyd G. Hill.)

Q. The question I asked you was, how far is it from Corner No. 5 to the centre of the creek?

A. That is approximately 700 feet.

Q. Give me the number of feet—don't say approximately? A. It is 693 feet.

Q. According to the surveyor general's field-notes that you have read from that distance is 1000 feet, is it not?

A. That distance is 1000 feet according to the notes.

Q. Your plat does not agree with those field-notes in that regard? A. No, sir.

Q. What is the area of the Lotta claim as located by you, between the stakes?

A. The area of the Lotta there is—it is slightly in excess [1277] of the area given in the patent. It is not marked on the map, I don't know,—I couldn't say now definitely.

Q. Somewhat larger, anyhow?

A. Somewhat larger, yes, sir.

Q. Your Lotta claim as located on exhibit "N," then, does not agree with the Lotta claim as located in the patent notes or the notes of the surveyor general's office in that it is larger than either of them, is that not true? A. That is correct.

Q. Now, we will turn to Corner No. 5—you said I think that you surveyed the Colorado lode claim for the Alaska-Juneau Company, did you not?

A. I did, yes, sir.

(Testimony of Lloyd G. Hill.)

Q. You also surveyed the Idaho lode?

A. I did, yes, sir.

Q. You didn't survey the Nevada, did you?

A. No, sir.

Q. Do you know any of the stakes of the Nevada on the ground? A. Yes, sir.

Q. Which one?

A. I know the location—it would be the west end line of the Nevada.

Q. When did you find that?

A. I have seen it since the survey was made—I couldn't say just the date.

Q. You surveyed the Idaho? A. Yes, sir.

Q. You know where stake No. 5 of the Idaho was placed, don't you?

Judge WINN.—We object to that as improper cross-examination.

Objection overruled. Plaintiff allowed an exception. [1278]

Q. You know where Stake No. 5 of the Idaho was placed by you when you made that survey?

A. Yes, sir, I do.

Q. The Idaho and Colorado were made at the same time? A. Yes, sir.

Q. You made the survey for the Alaska-Juneau Company for both at the same time?

A. Yes, sir.

Q. You were a deputy mineral surveyor at that time? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. Stake No. 5 of the Idaho as located by you is there in the ground yet? A. Yes, sir.

Q. The same place it was when you put it there?

A. Yes, sir.

Q. The corner of the Colorado which is nearest to Stake No. 5 of the Idaho can also be found in the ground, can it not? A. Yes, sir.

Q. Now, in surveying the Colorado for patent, what point did you start from?

Judge WINN.—I object on the same ground—that it appears from the records in this case that that is their defense and it is improper cross-examination.

By the COURT.—It appears the witness had something to do with surveying it. If his conduct at that time was inconsistent with his statement now, it would be competent. Objection overruled. Plaintiff allowed an exception.

Q. What point did you start from in making the survey of the Colorado?

A. I first located the northeast corner of the Colorado on the [1279] side line of the Royal lode.

Q. What point did you start from in doing that?

A. I started from stake No. 5 of the Lotta lode, Survey No. 87.

Q. Survey No. 87—that is identical with the corner of the Royal?

A. Yes, they are one and the same corners.

Q. That stake was in the ground at that time?

A. Yes, sir, that stake was in the ground at that time.

(Testimony of Lloyd G. Hill.)

Q. You knew it was and had known it was for many years? A. Yes, sir.

Q. You set up at that stake—stake No. 5 of the Lotta? A. I did.

Q. Identical with the corner stake of the Royal at that place? A. Yes, sir.

Q. Then, you ran what course?

A. I ran along the prolongation of the Lotta line 5-6, along the Royal line 4-5, in a southeasterly direction.

Q. How is that again?

A. I ran along the prolongation of the Lotta line 6-5 and continued up the Royal line 5-4 in a southeasterly direction and assumed the course of south 33-45 east.

Q. What was the distance you found between Corner No. 5 which is identical with Corner No. 6 of the Royal— A. 567.64 feet.

Q. That is the distance—now, Corner No. 5 of the Lotta is identical with Corner No. 6 of the Royal?

A. No, Corner No. 5 of the Lotta is identical with Corner No. 5 of the Royal.

Q. What did you establish there?

A. I established a corner of the Colorado claim, the northeast corner. [1280]

Q. Then, where did you go?

A. I then continued along the end line of the Colorado lode 600 feet.

Q. The same course?

(Testimony of Lloyd G. Hill.)

A. The same course, yes, sir.

Q. Then, what did you do?

A. Then I came back.

Q. Did you establish a corner there?

A. Yes, sir.

Q. Then, what did you do?

A. Then, I came back to the northeast corner again.

Q. 600 feet back on the trail? A. Yes, sir.

Q. Then, what did you do?

A. And I ran a line, a traverse line, somewhere near the north boundary of the Colorado lode.

Q. A traverse line?

A. Down towards Gold Creek, Last Chance Basin.

Q. How far did you run that way?

A. I ran down to the basin.

Q. How many feet did you run that way?

A. I at that time thought I ran—

Q. No matter what you thought—how many feet did you run that way?

A. I have some explanation to make—I *make* marked on the map 1472 feet, but I necessarily couldn't run it.

Q. You ran 1472 feet that way, is that right?

A. I think so, or 74—I haven't got these distances on there.

Q. 1474 feet along what course?

A. I said I ran a traverse line—that course and distance was [1281] computed—I had no way of

(Testimony of Lloyd G. Hill.)

determining the northwest corner of the Royal lode.

Q. How much did you compute it to be?

A. I think 1474.11 feet.

Q. Then, where did you run?

A. Then, I stopped—I didn't know where to locate the northwest corner of the Colorado lode; I had a fixed point down in the Last Chance Basin and I knew the corner, the northwest corner of the Colorado lode must be identical with Corner #3 of Survey No. 142 of the Last Chance Placer claim; that corner was obliterated—it was out; I had to determine that corner from some line of the Last Chance Survey No. 142 which I proceeded to do then.

Q. Put it in, did you?

A. I relocated that from the Last Chance patented claim, two corners of the Last Chance that were in position on the south bank of Gold Creek—those corners are still there.

Q. And that is the one you designated—that is the one, the corner, you designated as the southwest corner of the Colorado?

A. That is the corner I designated as the northwest corner of the Colorado.

Q. What is the number of it—5?

A. I think so, yes, sir—5.

Q. Then, where did you go?

A. After I located that corner of the Last Chance, I of course tied my traverse point into that and figured the course and distance of the north side line

(Testimony of Lloyd G. Hill.)
of the Colorado.

Q. And that you found to be 1474.11 feet, is that it? A. Yes, sir.

Q. From there where did you go?

A. From there I have a line 5-6 of the Idaho placer which is [1282] identical with the easterly end line of Survey No. 142 of the patented Last Chance, and I turned the required angle to make the west end line of the Colorado on a course of south 33-45 west or parallel with the side line of the Royal and the east end line of the Royal lode and ran it the required 600 feet.

Q. And located a monument there?

A. I did, I put a post there.

Q. And then, where did you go?

A. Then, I was through.

Q. Didn't you run from that monument to the other corners?

A. It was impossible, it was a precipitous mountain.

Q. Don't you know the rules and regulations of the surveyor general's office require you to run around a claim in full—you know that, don't you?

A. If it is impossible to do it, how are you going to do it?

Q. They require you to run around a claim in full unless it is impossible to do it? A. Yes, sir.

Q. And when it is impossible to do so, they require you to state the reasons why in your certificate and

(Testimony of Lloyd G. Hill.)

returns to the surveyor general's office?

A. Yes—they were not very particular at that time.

Q. Didn't they require it at that time?

A. I don't think so—they never brought that matter up, never instructed the deputies so.

Q. Did you make any such return to the surveyor general's office?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial. Objection overruled. Plaintiff excepts. [1283]

A. What return do you refer to? I made a return of the survey.

By the COURT.—He is asking you if you made a return that you didn't actually survey that because it was impossible.

A. No, sir, I don't recollect—I may have and may not.

Q. Is it not a fact that you can run all the lines of the Colorado on the ground without the slightest difficulty if you are a good surveyor—isn't that a fact?

A. No, sir, it is not my belief that you can.

Q. Did you not testify at the hearing had before Judge Lyons in this court, on the previous occasion, that you did run those lines? A. I couldn't say.

Q. Don't you know what you testified to at that time?

Objected to. Sustained.

Q. Is it not a fact that there is no excuse for run-

(Testimony of Lloyd G. Hill.)

ning a traverse line along that northerly line of the Colorado?

Objected to as repetition. Sustained.

Q. Now, those were the only corners that you located on the Colorado survey you have testified to?

A. Yes, sir.

Q. You tied it up to the Last Chance stakes that you knew were on the ground?

A. I tied it up to the Last Chance on the west and to the Royal claim on the east.

Q. That is that common stake of the Royal and Lotta? A. Yes, sir, that prolonged.

Q. You made no further ties on the survey?

A. No, sir.

Q. You located no other points on the ground when you surveyed [1284] the Colorado for patent, is that true? A. No, sir.

Q. I will ask you, Mr. Hill, at the hearing I have spoken of before, before Judge Lyons when this matter was up on an application for a temporary restraining order in the case in which you were a witness—you are the same Mr. Hill, are you not?

A. I am.

Q. If you didn't testify as follows:

“Q. If the Colorado were actually on the ground 1400 feet it would throw your Lotta claim 200 feet up the hill, would it not?”

That is a question I asked—I asked the question and you made the answer as follows:

(Testimony of Lloyd G. Hill.)

“A. According to the notes it would, according to the field-notes, yes.

Q. According to the official field-notes?

A. Yes, sir.

Q. Don't you know as a matter of fact, Mr. Hill, that the Colorado is 1400 feet long?

A. I know on the contrary that it is not.

Q. When did you first examine the Colorado?

A. I am speaking of—

Q. You make accurate notes, do you not?

A. I attempt to, yes.

Q. Yes— Now, by your own measurement you have made that Colorado—the Colorado is it not 1400 feet long?

A. On the notes at the time, it was represented to be 1475 feet long and a fraction, I think.

Q. Yes—

A. But the trouble is the ground is not there; you come [1285] to make an actual survey of it and the ground is not there.

Q. Did you not make an actual survey of the Colorado for patent? A. I did, yes, sir.

Q. Did you not find 1475 feet there?

A. I didn't do the chaining.

Q. What did you do, Mr. Hill?

A. I tended to the handling of the instruments.

Q. The chainmen deceived you to the extent of two or three hundred feet?

A. Because the claim is not the length the

(Testimony of Lloyd G. Hill.)

patent calls for.

Q. Is it not the length the patent calls for?

A. No, sir.

Q. Who cut that off?

A. Nobody cut that off, it was just a connection between two systems of surveys.

Q. This entire map is based upon just such miscalculations? A. No, sir.

Q. Is that the only miscalculation you made?

A. I didn't make any miscalculation—the calculation was made with care and accuracy; it represents the survey as actually made upon the ground. The Colorado had to fall within that ground; that controversy was with the location of the water rights, to the water claim—I didn't take in to the location.

Q. You testified that the Colorado was accurately delineated upon this map? [1286]

A. Accurately delineated, yes, sir, as far as the notes were.

Q. Yes—from the notes made by yourself, accurately made, is it that the Colorado is fourteen hundred and some feet long?

A. It was supposed to be that long at the time that map was—

Q. Since that time you have cut off 200 feet?

A. And since that time I have made it, I am perfectly willing to make a joint survey.

Q. To prove that you did not make a survey on the ground the first time?

A. To prove that a mistake happened when

(Testimony of Lloyd G. Hill.)

the official survey was made, which is not anything out of the ordinary; surveyors are not infallible.

Q. You have not, however, made a similar mistake with reference to the Lotta?"

—and there is a lot more this—Did you so testify, Mr. Hill?

Judge WINN.—I object to it and ask if he is going to impeach the witness that the questions be separated and put to him one at a time so I can make my objections. I also object further for the reason that he has read from a manuscript here to the witness and we do not know what it is, where it came from or what bearing it has and I do not see what he is attempting to impeach the witness on, etc.

Mr. HELLENTHAL.—The paper I am reading from purports to be a copy of the official reporter's notes.

Judge WINN.—If he wants to impeach the witness, let him put the official reporter on the stand and he can read from his notes.

By the COURT.—He may answer if he can whether he gave that [1287] testimony literally or in substance.

Plaintiff allowed an exception to the ruling.

A. As it is read, as the testimony is read, it is very disjointed and I am confident I never answered many of the questions the way you read them. In the main that is all right, but there are some very important things that mean hardly nothing to me the way you read the testimony.

(Testimony of Lloyd G. Hill.)

Q. There are many things that I have read to you then, Mr. Hill, that you did not testify to on that hearing? A. I rather think so, yes.

Q. Could you name any of them?

A. No, sir, I wouldn't care to.

By the COURT.—You may submit the manuscript to him to refresh his memory.

Mr. HELLENTHAL.—I will have the manuscript marked so it may be identified in the record—it is not being offered. It is marked Defendant's Exhibit Number 1 for Identification, commencing on page 5—take 5, 6 and 7 so that you will be able to identify it afterwards as being the same manuscript.

Q. Now, you may look this over, commencing down there where I have marked and read it over?

A. I have read it.

Q. Now, Mr. Hill, having read that—what purports to be an extract from the reporter's notes—I will now ask you in what regard the reporter's notes are incorrect?

A. I should like to take it up question by question and explain a few things.

Q. I want you to do this—I asked you this question, in what regard are the reporter's notes incorrect, and you may [1288] point out any way you please; don't explain anything, just say in what regard they are incorrect—that is what I am asking you to do.

Judge WINN.—I think under the circumstances, when this paper is not verified by any certificate from the stenographer, the witness would be entitled to

(Testimony of Lloyd G. Hill.)

answer the question in any way he wants to.

Q. Just take those questions now, Mr. Hill, as given you—read the question and read the answer and then just state how it should be—take it one by one?

A. This question—answer my question—if the Colorado was actually on the ground 1400 feet it would throw your Lotta claim 200 feet up the hill, would it not? Answer: According to the notes it would, according to the field-notes.

Q. Is that all right?

A. I wish to say in regard to that that it is incomplete because at that time if the Colorado were 1474 feet long it would either throw the Last Chance patented claims down the creek or it might throw the Lotta up the creek—it depends entirely upon which end you would start from.

Q. Now, do you mean to tell the Court that you made all that explanation and delivered yourself of all that testimony upon that hearing, when that question was asked you?

A. I am of the opinion I did, yes, sir.

Q. You are of the opinion you did and that the reporter is incorrect? A. Incomplete.

Judge WINN.—There isn't anything here to show these are the reporter's notes.

Q. If these are the reporter's notes, then the reporter's notes [1289] are incomplete to that extent, is that true? A. I think so, yes, sir.

Q. Now, proceed to the next one?

A. Question: Yes. Now, by your own measure-

(Testimony of Lloyd G. Hill.)

ment you have made that Colorado, the Colorado is it not 1400 feet long? Answer: On the notes at the time, it was represented to be 1475 feet long and a fraction, I think.

Q. Is that all right?

A. Yes, sir, that is not the place.

Mr. HELLENTHAL.—Let the record show that the witness is reading from Defendant's Exhibit No. 1.

Judge WINN.—I presume under the Court's instructions Mr. Hill can read each question and give explanations?

By the COURT.—Yes, I take it he has looked for those parts of the testimony that he thinks are incomplete or incorrect.

The WITNESS.—(Reading.) Question: Did you not find 1475 feet there? Answer: I didn't do the chaining. Question: What did you do, Mr. Hill, there? Answer: I tended to the handling of the instrument. Question: The chainmen deceived you to the extent of two or three hundred feet. Answer: Because the claim is not the length the patent calls for. That is the answer. I said, I remember distinctly there that the notes would have tallied out or the claim would have tallied out with the notes providing the measurements of the chainman doing the chaining had been given to me properly.

Q. What is that you remember distinctly?

A. I said that the notes would have tallied—the claim would have been 1474 feet long providing the measurements made by the chainman had been given

(Testimony of Lloyd G. Hill.)

to me properly. I remember [1290] distinctly that at the time the question came up about handling the instrument that I enlarged on that to some extent, attempting to show that I very seldom did the chaining—the chaining and measurements were given to me by the assistants, who swear on oath that those measurements are properly made and are embodied in the official field-notes.

Q. Is that all the incorrectness there is in regard to Mr. Robertson's report?

A. Yes, sir, those are the main points.

Q. Those are the main points?

A. That I wanted to take up, yes, sir.

Q. Any other minor parts?

A. No, sir, I don't know that there is—there is none I care to take up—there is some there.

Q. In regard to all the balance of the testimony you say that it is correct?

Judge WINN.—That is, all the balance you read to him.

Q. All the balance I read to you—that portion read to you, is that correct?

A. Yes, in the main it is, I think.

Q. In the main—is it correct or is it not?

A. I can't make it any more definite than I attempted to.

Q. Now, Mr. Hill, how long is the Colorado as platted by you on your plat exhibit "N"?

A. The north side line of the Colorado is 1215 feet long.

Q. What is the course given?

(Testimony of Lloyd G. Hill.)

A. The course given is south 88-54 east.

Q. Is that the same course given in the patent notes? A. It is not, no, sir.

Q. What is the course given in the patent notes?
[1291]

A. I think the course in the patent notes is 83° east—north 83° east 1474 feet and a fraction of a foot.

Q. How many degrees difference is there in the course as given by you and the course in the patent notes?

Judge WINN.—It will be understood that all this examination as to the Colorado is objected to on the ground that it is improper cross-examination and it is a part of their main case.

Objection overruled and exception allowed. (This objection and exception apply to all the examination regarding the Colorado.)

Q. How many degrees difference?

A. Approximately 8°.

Q. Approximately 8°? A. Yes, sir.

Q. In minutes—how many degrees and how many minutes?

A. I won't attempt to work that out in my head.

Q. Something over 8°? A. Yes, sir.

Q. Between 8 and 9°? A. Yes, sir.

Q. If you were to commence at this corner, which is identical with the Last Chance Placer corner—that is the northwest corner of the Colorado, is it?

A. Yes, sir.

Q. That is still on the ground, is it not?

(Testimony of Lloyd G. Hill.)

A. No, sir, it is liable to destruction—very often in times of high water in Gold Creek, it would take it out.

Q. But it is still there now, is it not?

A. I think there is a broken off post there now, yes, sir. [1292]

Q. That ties to Number 5 of the Idaho placer, does it not, that broken off post? A. Yes, sir.

Q. You commenced with that broken off post in making your survey of it—that is you tie to that? You recognize that as a corner in your plat, do you not?

A. I recognize that as a corner, but I don't commence there.

Q. I understand that—that was a misstatement—you recognize that as a corner in making your plat, exhibit "N"? A. I do, yes, sir.

Q. I will ask you to start at that corner, which is marked here Corner No. 5 of the Colorado and take the necessary instruments and draw a line on there 1215 feet along the course indicated in the patent notes—what instruments do you need?

A. I should have a protractor.

Q. Can you figure out where that would land you on the easterly end line of the Colorado?

A. On the easterly end line of the Colorado?

Q. Yes.

A. It would land you much nearer the corner of the Royal, on the Royal side line.

Q. How much nearer?

A. It would be considerably nearer—it would be

(Testimony of Lloyd G. Hill.)

so that the tie from Corner 6 of the Colorado to the Corner No. 5 of the Royal would be thrown entirely off.

Q. It wouldn't fit, would it? A. No.

Q. In order to make tie fit that Colorado you had to move that side line over 8° and something, is that not true? [1293]

A. No, that 8° was made from a connection between two points that are designated in the patent.

Q. What are those points?

A. Those points are the tie on the side line of the Royal lode and Corner Number 5 of the Royal and Corner No. 3 of Survey No. 142 Last Chance Placer.

Q. But that corner of the Colorado is not in place, is it?

A. Yes, sir, that corner is identical with Corner No. 3 of the Last Chance.

Q. I am talking about a different corner. What is the number of this corner? A. Corner No. 6.

Q. Corner No. 6 of the Colorado is not in place now, is it? No stake there? A. No.

Q. You locate that stake by running a line the required distance from the corner of the Lotta, No. 5?

A. I do.

Q. But in order to make that fit, in order to bring post #6 of the Colorado where you claim it is and preserve post #5, which is identical with the post, one of the patent posts of the Last Chance Placer, you have to change the course between post 5 and 6 of the Colorado approximately 8° ?

A. Yes, by connecting those two fixed points, the

(Testimony of Lloyd G. Hill.)

course is changed.

Q. 8° and then some? A. Yes, sir.

Q. Had you not changed that course 8° and then some, had you not changed that course something over 8°, the northerly side line of the Colorado would be many feet in a northerly [1294] direction from where it now is—would it not? A. Yes, sir.

Q. At the point where—

A. At the point where it intersects the side line of the Royal claim.

Q. How many feet approximately?

A. I wouldn't attempt to say.

Q. What would you figure that at approximately? Can't you figure it? A. No, sir, I cannot.

Q. If I should give you a protractor to work with, could you figure it out approximately?

A. Yes, sir, I could. If you have a traverse table I can figure it out quicker.

Q. Would you take any length of time to figure this?

Judge WINN.—We object to this as not proper cross-examination.

Objection overruled. Plaintiff excepts.

The WITNESS.—The distance would be approximately 125 feet; the Corner No. 6 of the Colorado lode would be thrown that far to the Corner No. 5 of the Royal lode, which is the tie.

Q. What, then, would be the difference between that corner, if the corner were there located, of the Colorado and the corner of the Lotta?

A. The distance there would be probably approxi-

(Testimony of Lloyd G. Hill.)

mately 440 feet.

Q. What is the distance as given in the notes?

A. The distance as given in the notes is 567.

Q. 125 feet short? A. Yes, sir.

Mr. HELLENTHAL.—I offer in evidence in connection with the cross-examination of the witness a copy of the official [1295] plat of the survey of the Colorado, so that the testimony of this witness may be more intelligible.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial.

By the COURT.—I understand that Mr. Hill has made the official survey for patent of this Colorado?

Mr. HELLENTHAL.—Yes, your Honor.

Objection overruled. Plaintiff allowed an exception.

The plat is marked Defendant's Exhibit "2" and admitted in evidence.

Q. This certified copy marked Defendant's Exhibit No. 2 ties the Corner #6 of the Colorado to the Corner #5 of the Royal lode, which you say is identical with stake No. 5 of the Lotta?

A. It does, yes, sir.

Q. And the distance there given is how much? 567.64 feet—is that right? A. Yes, sir.

Q. That is along the course indicated upon this plat? A. Yes, sir.

Q. How long is the Colorado now as delineated upon exhibit "N"?

A. The Colorado is 1215 feet long now and a fraction.

(Testimony of Lloyd G. Hill.)

Q. How long was it as originally delineated upon this plat that has been offered in evidence, Exhibit No. 2? A. 1474 and a fraction.

Q. How long was it upon the plat you offered in evidence to the correctness of which you testified upon the hearing before Judge Lyons, in the preliminary hearing?

A. The same distance that is shown on this plat.

Q. The same distance? [1296] A. Yes, sir.

Q. I will ask you if upon the hearing before Judge Lyons, on that occasion, you did not testify as follows; in answer to my questions, which I will read to you: Question: How long does the Colorado scale on that map? I was referring to a map you had then offered for the consideration of the Court and to the correctness of which you had formerly testified—you recall that map?

A. I recall the map.

Q. And in testifying concerning that matter I asked you this question: How long does the Colorado scale on that map, Mr. Hill? Answer: The Colorado scales on this map approximately 1235 feet.

Judge WINN.—What map do I understand you mean?

Mr. HELLENTHAL.—The map used before Judge Lyons on that occasion.

Judge WINN.—I object to the question until that map is produced.

Q. You remember such a map, Mr. Hill, don't you?

(Testimony of Lloyd G. Hill.)

A. Yes, sir, I remember the map I introduced at that time.

Judge WINN.—Can you not identify the map in some way?

Q. You remember a map that was used at that time which you made?

A. I do,—I assisted in making a map. We only had one map—

Q. There was one map used on that occasion?

A. We had to use a tracing—I forget what it was marked.

Judge WINN.—It is in evidence in that case?

Mr. HELLENTHAL.—It is in evidence in that case.

Judge WINN.—I demand the production of it.

Mr. HELLENTHAL.—Mr. Robertson, the court reporter, is in Skagway. [1297]

Afternoon Session.

Continuation of cross-examination of Mr. HILL.
(By Mr. HELLENTHAL.)

Q. Mr. Hill, you remember testifying at the last hearing with reference to the map that has been offered in evidence that the length of the Colorado as scaled on that map was 1235 feet, don't you?

A. May I see the record? I should like to see it.

By the COURT.—You are referring to the former examination?

Mr. HELLENTHAL.—Yes, sir.

Q. The question is—you can read it in the record, the question and answer—

Question: How long does the Colorado scale

(Testimony of Lloyd G. Hill.)

on that map, Mr. Hill?

Answer: The Colorado scales on this map approximately 1235 feet.—

Did you so testify? A. Yes, sir; I think so.

Q. I hand you here a blue-print—look at it and see if that is the one used on the former trial?

A. Yes, sir, that is the map.

Q. That was used at the former trial?

A. Yes, sir.

Q. And that is the one with reference to which you testified? A. Yes, sir.

The map is marked Defendant's Exhibit No. 3 for Identification.

Q. At that time, then, you presumed the Colorado to be approximately 1235 feet?

A. Yes, sir, I showed it so on that map; I hadn't had time to [1298] figure the connection—I merely platted it and scaled it.

Q. You testified at the former hearing as follows, did you not, Mr. Hill, about that Colorado claim—this is a question asked by me:

Question: Mr. Hill, what is the size of it, what is the length of it?

Answer: The size of the Colorado, it seems to be, as it is on the ground, on the surface, seems to be about 1230—about 1237 or 1238 feet long. You testified to that, did you?

A. Yes, sir, I think I did.

Q. You were mistaken at that time as to the size of the Colorado?

A. I qualified that all through those statements by

(Testimony of Lloyd G. Hill.)

“about” and “approximately,” by “scaling”; there is nothing accurate about that within a few feet, you know.

Q. How long do you find it to be now on this map?

A. I find it, by figuring it out here, to be 1215 feet.

Q. It was necessary to slice off 15 or 20 feet in order to make it fit? A. No, sir.

Q. You didn't cut off any? A. No.

Q. That 15 or 20 feet or whatever it was, do you mean to say was a mere approximation and included in your “about”—is that it? A. Yes, sir.

Q. Now, the difference between the northerly side line of the Colorado as it is now located by you in length and the northerly line as located then is something a little less [1299] than 300 feet?

A. 259 feet, I think.

Q. The only thing you determined the northerly line by is the extension of the Lotta line, drawn from post 6 and 5 as located on the ground?

A. No, sir, that is not the only thing I determined it by.

Q. What is the other thing?

A. The other is by the angle turned from post 5-4 of the Lotta, also post of the Royal turning the proper angle,—that is an additional check.

Q. An additional check? A. Yes, sir.

Q. How about the angle you turned at post #5 of the Colorado—does that check?

A. The angle I turn at post No. 5 from what?

Q. That is the one that is off 8° is it not?

(Testimony of Lloyd G. Hill.)

A. Off 8° from the call as it is in the patent,—yes, sir, it is.

Q. Now, the mistake that was made in running the northerly line there as to distance, was made by your chainman—is that the way you want to be understood? A. It must have been; yes, sir.

Q. You couldn't have made the mistake yourself?

A. I could have, yes, sir.

Q. But you charge that up to the chainman?

A. Well, they chained the distance off.

Q. And they are off that distance? A. Yes.

Q. That was a mistake, was it not—that whole business—a mistake of some 300 feet?

A. There was a mistake made in the measurement of 259 feet at [1300] the time that survey was made.

Q. There was only a mistake of a little over 8° in the course? A. Yes, sir.

Q. Who made that mistake—you made that yourself, didn't you?

A. No, the course that I would arrive at was entirely dependent upon the distances—given the wrong distance I couldn't get the course I showed in the patent notice, because one is dependent upon the other.

Q. When you ran your course you set up your instrument, didn't you? A. Yes, sir.

Q. And you determine from sighting across your instrument or from your instrument the course you are running on? A. Yes, sir.

Q. You did that part of it? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. If a mistake was made in that, you made the mistake?

A. No—that is dependent upon the distance; the course given in the patent was not one single course that was laid out—that is the result of a traverse line which I run connecting one corner of the Colorado with the other corner.

Q. Didn't you make a mistake of 8° in that?

A. That mistake came through the computation of the length and course of that line.

Q. Who made that mistake, you or somebody else, that is what I am trying to get at?

A. The difference in the course is dependent on the length of the line that was measured on the ground.

Q. Somebody made a mistake, though?

A. Yes, the chainman made a mistake. [1301]

Q. The chainmen made all the mistakes?

A. Yes, sir.

Q. What is the width of the Colorado?

A. The width of the Colorado is 522 feet on the east end and 600 feet on the west end line.

Q. The notes give it as 600 feet on the east end, don't they?

A. No, I think not—if they do, there is an exclusion there, with the survey of the Nevada lode.

Q. Did you find that stake, that Nevada stake?

A. Yes, sir.

Q. Where is that located?

A. That is located up there above Snowslide Gulch.

Q. It is not located up here where it is shown on

(Testimony of Lloyd G. Hill.)

that map? A. Absolutely there.

Q. In that place?

A. Yes, sir, where it is shown on the map, marked stake No. 2 of the Colorado.

Q. Of the Nevada?

A. Stake No. 2 of the Colorado is the identical stake, with one of the official corners of the Nevada lode.

Q. That survey is correct then? A. Yes, sir.

Q. You are sure of that? A. I am.

(To follow the first omission on page 125 indicated by * * * on said page 125 of original transcript [printed record, page 272], being a continuation of the cross-examination of Mr. Hill by Mr. Hellenthal.)

Q. You also assisted, Mr. Hill, in running the lines and setting [1302] the stakes of the Colorado, did you not? A. I did, yes, sir.

Q. I hand you here the commissioner's records, notice of location of the Colorado, page 95—look at that—that is the location that you surveyed?

Judge WINN.—We make the same objection—that this is not proper cross-examination.

Objection overruled. Plaintiff allowed an exception.

A. Yes, sir, I did.

Q. You assisted Mr. Garside, or did you do that alone? A. We were up there together.

Q. Anyhow you helped do the surveying?

A. I wanted to qualify this survey—this surveying was very hurriedly done in this instance of the location and it was a preliminary survey.

(Testimony of Lloyd G. Hill.)

Q. The notes as given in that preliminary survey, however, are almost the same as your notes in your official survey of the Colorado, are they not?

A. Yes, sir.

Q. Almost the same? A. Almost.

Q. And would locate the Colorado just about as you locate it in your official survey, the courses and distances are approximately the same—is that true?

A. With the exception of a conflict existing at the southeast corner of the Colorado with the prior location of the Nevada.

Q. That is not in there?

A. No, that is not in there.

Q. But it is in the other?

A. It is in the other, yes, sir. [1303]

Q. You made the same mistake then in running that preliminary survey that you did in running the official survey, is that true? A. Yes, sir.

Q. The same identical mistake—I will offer this in evidence. We will offer a certified copy.

Judge WINN.—We make the same objection.

Objection overruled and exception allowed.

(Certified copy when received to be marked Defendant's Exhibit No. 5.)

Q. Now, Mr. Hill, in tying the Lotta, when you made both of those preliminary surveys, one for the Oregon and the other for the Colorado you knew all the time where stake No. 5 of the Lotta was?

A. I did; yes, sir.

Q. And if those things don't check they are merely mistakes, is that true? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. Now, your line there of the Lotta measures 1526 feet, does it not? A. Yes, sir.

Q. That is 26 feet longer than the patent notice, is that true? A. Yes, sir.

Q. The ground between stake Number 5 and 6 is such that you wouldn't be apt to make a mistake about that?

A. Yes, sir, you can make a mistake very easy—it is very rough, very precipitous and one of the most difficult lines to measure there is in the country.

Q. How about the line between stake—from 3 to 5?

A. From 3 to 5 is pretty steep, the latter part of it—the last 150 feet is very steep. [1304]

Q. Still it is such a line that a man with a surveyor's paraphernalia hasn't any difficulty in running?

A. No, not much difficulty in running that line.

Q. Then, a man with a practical surveyor's instruments hasn't any difficulty in running the other line? A. Yes, a great deal of difficulty.

Q. How about the upper side line of the Lotta—is there any difficulty in running that?

A. Yes, there is more difficulty running that than the lower side line.

Q. How about the northerly end line—any difficulty in running that?

A. The northerly end line is a difficult line too, very difficult.

Q. But the southerly end line you can run considerably easier?

(Testimony of Lloyd G. Hill.)

A. Yes, that is not so difficult as the others.

Q. How long is your southerly end line there?

A. The southerly end line of the center lode stake is 144.9 feet.

Q. How much is the other?

A. And the other is 140.38.

Q. How much is the total? A. About 285 feet.

Q. About 15 short? A. It is, yes, sir.

Q. That country isn't so rough but what a surveyor can readily run that line—from your knowledge of surveying what would you say, how would it be with a man *that no* surveyor's instruments, merely had a pocket compass and a dressmaker's tape and it was run by moonlight—how would that be?

Objected to—sustained. [1305]

Q. Now, Mr. Hill, the creek you have delineated pretty accurately on your map here?

A. Tried to.

Q. In running a line, you suggested this morning, in surveying for patent, it is not necessary to run those things as accurately as you would under circumstances of this kind—isn't that true?

A. That question again.

Q. This morning you said in making a survey for patent, you wouldn't be as accurate in running the delineations and sinuosities of the creek through the claim as you would in preparing a map for a trial of this kind?

Judge WINN.—He never testified to that.

By the COURT.—His testimony was that he filled

(Testimony of Lloyd G. Hill.)

in the creek across the claim, as I understood it.

The WITNESS.—Yes, sir.

Q. That was the testimony? A. Yes, sir.

Q. You catch it where it intersects the lines?

A. Yes, sir.

Q. And fill in between the lines?

A. Yes, sir, sketch that in—take a course probably—from where you would intersect the creek with the line and then fill in and join your creek.

Q. In running from one stake to another, if you cross the creek when you get to the creek you measure that distance and when you run the other line, you measure the creek the same way—the part of where the creek strikes the claim, and comes out, and the other part is not so particular?

A. Not so particular. [1306]

Q. This plat is fairly accurate? A. I think so.

Q. What have you done now to delineate the creek on the ground?

A. I haven't done anything to delineate it upon the ground.

Q. What have you done about surveying it—what have you done on the ground in the way of surveying it?

A. I didn't pay a great deal of attention to the creek.

Q. Didn't pay much attention to it?

A. No; the corners I thought that were standing, were more important than the creek.

Q. So you didn't pay much attention to the creek. is that right? A. Yes, sir, that is correct.

(Testimony of Lloyd G. Hill.)

(To follow the second omission on page 125 of the original transcript [printed record, page 273] indicated by * * * being a continuation of the cross-examination of Mr. Hill by Mr. Hellenthal.)

Q. (Repeated.) What else did you do there?

A. I regarded stake Number 2 and stake Number 1 on the northeast end line; I regarded stake Number 6 and stake No. 5 on the southwest side line. I regarded stake No. 4 and 3 on the southeast end line of the Lotta, and that plat is drawn in accordance with the survey of those stakes actually made on the ground.

Q. And it fits those stakes as actually made on the ground? A. I think so; yes, sir.

Q. But it doesn't fit either the courses or distances in either the plat in the surveyor general's office or the plat in the patent, the notes of the patent or the notes in the surveyor general's office, does it?

Objected to as repetition—objection sustained.
[1307]

(To follow the omission on page 130 of original transcript [printed record, page 278] indicated by * * * being part of the cross-examination of Mr. Hill by Mr. Hellenthal.)

Q. (Repeated.) Would you run the number of feet along the line indicated here on the ground, 1474.11 feet, according to the course given in the patent, and see if you arrive at the point given or indicated on this identification; just put naught there in pencil, will you, indicate it by a naught, by a round circle—see if you arrive there, will you—see if that is right.

(Testimony of Lloyd G. Hill.)

Objected to as not proper cross-examination.

Judge WINN.—If Mr. Hellenthal will indicate some object in this—

Mr. HELLENTHAL.—We are trying to locate the Lotta—that is the object.

A. Yes, sir, I should say that that line measures 1474 feet.

Q. That is according to the course given in the patent?

A. That is according to the distance as called for in the patent.

Q. Take this protractor and see if that course is correct as given in the patent?

A. Yes, I think that is correct as shown on here, provided that is the meridian—I guess it is.

Q. Now, Mr. Hill, you note there that the corner marked Corner Number 5 of the Colorado—that is the one you testified is identical with the Last Chance Placer corner, is it not? A. On my plan it is, yes.

Q. That is also identical with one of the Oregon corners, the notice of locating as locating the Oregon on the ground? A. Yes, sir, I think so.

Q. Now, I will ask you to assume that that corner is correctly [1308] platted and take that notice of location of the Oregon and determine whether the line of the Oregon claim running from that point, the side line of the Oregon starting from that point, is correctly delineated on this map?

Same objection as improper cross-examination.

Objection overruled. Plaintiff allowed an exception.

(Testimony of Lloyd G. Hill.)

A. I don't propose to start in and check up all those maps here against that drawing table and the lines of those plats and scale them off.

By the COURT.—If you wish to ask the witness questions of that kind you can submit them in writing or submit them over night, and unless he refuses to work for you he can answer them, but it is taking too much time to have these calculations worked out here in the courtroom.

Q. You don't think you can figure this out without taking a great deal of time?

A. I wouldn't want to; I don't want to identify another man's map I never saw except fifteen minutes ago.

Q. We will let you take this other map down—it has been marked for identification exhibit No. 6—and let you take it in your custody and under your control, if you will take good care of it, and the question now will be for you to determine between now and to-morrow morning if there is any possible way to put that Lotta parallelogram 300 feet wide and 1500 feet long, preserve the courses as given in the patent and the distances from the creek, assuming the creek to be properly delineated upon this map—if there is any possible way to lay that claim on the ground but the way it is laid there by the red line?

Judge WINN.—We object to the request made by counsel, in order [1309] to protect the witness while *he on* the witness-stand, etc.

By the COURT.—The question may be asked the witness; the matter of compelling him to answer will

(Testimony of Lloyd G. Hill.)

be taken up later.

The WITNESS.—What is that question?

Q. My question is, can you put the Lotta patented lode claim upon the ground or upon this map in any way other than the way it is here platted and indicated by the red lines, having regard for the creek, assuming that the creek is properly located upon this map, of which I speak, which is Defendant's Identification Number 6, assuming the creek is properly located and having regard for the courses and distances and ties given in the patent that has been produced in evidence?

A. I don't propose to try to do anything I can't that you request.

Q. Then, I will ask the Court to compel you to do it, right here now.

After argument—

By the COURT.—Is this the last one of this class of questions you are going to ask this witness?

Mr. HELLENTHAL.—Yes, sir.

By the COURT.—The Court will take a recess for ten minutes and if you can satisfy yourself so as to give a reasonably safe opinion in your judgment in that time you may do so.

After recess—

Q. Have you during the recess made an examination of this map exhibit No. 6 for Identification?

A. I have made a quick examination of it, yes, sir.

Judge WINN.—My objection goes to all these questions concerning [1310] this plat.

(Testimony of Lloyd G. Hill.)

By the COURT.—Yes, sir, and you are allowed your exception.

Q. In the examination you have made of it have you been able to locate the parallelogram 300 ft. by 1500 ft., observing the courses and distances given in the patent, with ties to Gold Creek as given in the patent, in any place other than the place in which it is here delineated, assuming of course that the creek is correctly platted?

A. I haven't been able to determine anything from the patent—there is no tie in the patent to Gold Creek.

Q. I am asking you, is there not a tie of 1200 feet and 40 feet, two ties, 1200 feet and 40 feet, to Gold Creek, in the little plat that is part of the patent?

A. According to the official field-notes the tie to the creek is given as one thousand feet on the southwesterly side line of the Lotta. According to the plat which is in the recording book here with the patent the course calls for 1200 feet, a difference of 200 feet.

Q. Well, now, we are going to pay no attention to the official field-notes in this question—I am asking you now about the patent, the tie being 1200 feet in one instance and 40 feet in the other—do you understand what I mean?

A. You are talking about the plat included with the patent?

Q. I am talking about the plat included with the patent, which is part of the patent?

A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Judge WINN.—There is no map with the patent—it is a drawing placed upon the record-book probably by the recorder—it is all full of mistakes and we will show that as soon as I get a chance to cross-examine Mr. Hill. We object to it. [1311]

By the COURT.—You were to furnish a certified copy of the patent of the Lotta, including that plat in the book.

Judge WINN.—Yes, sir, but they haven't got it up yet. Objection overruled. Plaintiff allowed an exception.

Q. I refer to the plat, so you will understand it, appearing on page 151 of this Book 7 of the Records of the Commissioner, in which it occurs as part of the patent to the Lotta claim. Now, calling your attention to the map I now hand you, marked for Identification Defendant's Exhibit No. 6—this is the plat that you have been examining during the recess given by the Court for that purpose—you have made an examination of it, Mr. Hill?

A. Yes, sir, I made a casual examination.

Q. Such an examination as you could make in the time given? A. Yes, sir.

Q. It was careful enough was it not?

A. It was careful as much as I went into it—of course, I could not go into it very much in that time.

Q. Assuming that the creek is correctly platted on that map—I will ask you if you can locate the parallelogram 300 feet wide and 1500 feet long at any place upon that map other than the place indicated by the red lines and preserve the courses given in the

(Testimony of Lloyd G. Hill.)

patent notes and the distances given in the patent notes and also the ties given in the plat which is included in the patent to Gold Creek, 40 feet in the one case on the upper line and 1200 feet on the lower line?

Judge WINN.—That is the red lines?

A. Well, I don't think I have had sufficient time to demonstrate whether I could or not. [1312]

Q. During the time you had, however, you have not been able to do it? A. I didn't attempt to.

Q. You didn't attempt to? A. No, sir.

Q. I thought you were going to take the time and attempt it and it was for that purpose we had a recess.

A. I was making an examination of other portions of the map and came to the conclusion that the map was wrong.

Q. The map is wrong? A. Yes, sir.

Q. What is wrong about it?

A. To some extent—the point marked Alaska-Juneau dam is not in the proper position.

Q. Well, now, in spite of the fact that the Court told you to make an examination of it in order that you might answer that question, you made no attempt to determine whether that question could be answered or not—is that true?

A. It was such a hypothetical question that I couldn't; in the first place I would have to presume that the creek had never changed its course since the time of the Lotta survey, twenty-three years ago.

(Testimony of Lloyd G. Hill.)

Q. All that I asked you to assume.

A. It was entirely hypothetical, the question and the answer.

Q. Altogether hypothetical?

A. I didn't succeed while I was out there in placing the parallelogram without changing the creek—I didn't work long there, however.

Q. Did you succeed in placing the parallelogram, assuming the creek to be correct and observing the notes and courses [1313] in the patent, in any other place except that red one?

A. No, sir.

Q. You did not? A. I did not.

Q. You were not able to, were you?

A. I was not able to in the time I had.

Q. Do you think you could do it if you had more time? A. Well, I wouldn't care to say.

Q. You have not been able to lay that parallelogram in any other place? A. No.

Q. And you refuse to take this map to your office to determine whether it can be placed elsewhere?

A. I don't care to, no.

Q. And you can't tell anything further about this map without taking it to your office, can you?

A. Yes, I can tell in regard to the black line.

Q. What about that?

A. Marked west side line of Lotta as claimed by the Ebner Company.

Q. What about that?

A. Well, I think that is the same line as that marked 5-6 of the Lotta on exhibit "N."

(Testimony of Lloyd G. Hill.)

Q. On your plat? A. Yes, sir.

Q. If that is the same line marked as line between 5 and 6 on the Lotta on exhibit "N," you would also say that the line on this identification 6, between Corner 2 and Corner 3 is the same, is it not, as on exhibit N'?"

A. I wouldn't care to say about that—I just care to define that [1314] one line, the southwest side line of the Lotta.

Q. That is approximately according to the course you gave in your exhibit "N" also, is it not?

A. Very close, yes, sir.

Q. (By Judge WINN.) Which line?

A. The southwest side line of the Lotta.

Q. Assuming that is correctly laid upon the ground, I will now ask you if the green line—well, never mind that—is there anything else you can testify to about that map without taking it to your office?

A. No, there is not anything I care to testify to.

Q. That line 5-6, however, that is as you claim it to be—that is all right?

A. I think so, approximately.

Q. The other lines you don't know anything about? A. No.

Q. And you don't care to take the map to your office to acquaint yourself with it so you can testify?

A. No, I do not.

Q. Have you ever seen Corner No. 2 of the Nevada?

(Testimony of Lloyd G. Hill.)

A. Yes, I think I saw that at the time I made the official survey of the Colorado lode.

Q. That is the only time you ever saw it?

A. No, I think I have seen it again, some time subsequent to that.

Q. Will you describe that corner?

A. No, sir, I can't describe it now—it was a stake 4x4 then, 4 inches square and about 4 feet long.

Q. A stake 4x4, 4 inches square, about 4 feet long?

A. Yes, sir.

Q. Was it a painted stake? [1315]

A. Yes, sir, I think so.

Q. Any legend on it?

A. The number of the survey and Corner 2.

Q. Indicating that it was a corner of the Nevada?

A. Yes, sir.

Q. Corner 2? A. Yes, sir.

Q. How was the stake set in the ground?

A. I think it was set in rock.

Q. You think it was set in rock—rocks piled around it? A. Yes, sir.

Q. Small rocks?

A. Ordinary rocks, some of them **large and** some small.

Q. Where was it set with reference to the cliff?

A. Well, I don't recollect the position of it.

Q. Any trees or anything there, witness trees or anything to indicate where that stake was?

A. No.

Q. No witness trees or any other witness marks in there?

(Testimony of Lloyd G. Hill.)

A. I didn't see any—I didn't make the Nevada survey—that was made by Mr. Alfred Williams.

Q. But when you made the Colorado survey, you of course checked with that stake, did you not—did you survey to that stake or did you just find it and plat it out afterwards?

A. No, I simply set my corner of the Colorado and sent in those notes, and I found there was a conflict between the Colorado and the Nevada and the plat was sent back, and I went up and made the amended survey, cutting out that little portion and also making the corner of the Nevada a corner, common corner of the Colorado, marked No. 2 on this map, and then followed along one of the side lines, I think—no, [1316] the end line of the Nevada and also established another corner up there, Corner No. 3 of the Colorado.

Q. And you are sure that the corner of the Nevada now that is there on the ground was on the ground at that time, was there, indicated by a post 4x4, three or four feet above the ground, painted white?

A. I think so, to the best of my recollection.

Q. You have never been up there since?

A. No.

Q. If the corner of the Nevada is indicated by a large rock and that large rock is appropriately marked and ties and witnessed by another inscription on a nearby rock, that is not the corner that you found?

Objected to as not proper cross-examination. Objection overruled. Plaintiff allowed an exception.

(Testimony of Lloyd G. Hill.)

Q. If the monument at the present time, Mr. Hill, on the ground, is a large rock, witnessed by an inscription on a nearby rock or bluff in the rocks, chiseled in so as to locate that corner definitely—that was not the corner that you found at the time you surveyed the Colorado and found a four-inch post there?

A. It was not, no, sir.

Q. And if you tied into a four-inch post and that is the corner—you didn't find the corner, is that it?

A. I didn't find the rock corner that you speak of, but I found a post marked Nevada at that time, the corner could have been changed and be in the same position—I don't know a thing about that.

Mr. HELLENTHAL.—That is all. [1317]

(By Judge WINN.)

Q. I don't remember, Mr. Hill, when you were examined directly before as to whether or not I called your attention to this exhibit "N" and asked you anything about these black dots with red circles around them, at various places and corners, etc., what is represented on that map as being mining claims. Now, I will call your attention to them and ask you what they are.

A. They are corners of various mining claims that were found standing and marked on the ground—some of them have the appearance of being very old and various surveys.

Q. Now, how long since has it been that you saw those particular corners, especially along the northerly end line of the Lotta, Take lode, Keystone,

(Testimony of Lloyd G. Hill.)

Crown Point and up to the Golden Fleece?

A. That particular set of corners I have seen from the spring of 1898 at intervals up to the present time, all of them.

Q. Now, Mr. Hill, I will ask you another question concerning something I went into *particllay* on direct examination and that is, taking the corner that is marked Number 2 of the Crown Point, which is described in the manner I have just indicated with a black dot and a red circle around it—that is the corner from which there is a call made and a tie made to the U. S. Monument No. 2 and is referred to in the patent papers in this case, is it not?

Mr. SHACKLEFORD. — Same objection as offered to this line of testimony before.

Judge WINN.—It is preliminary.

Objection overruled. Defendant allowed an exception.

A. It is, yes, sir.

Q. And your actual measurement found that how many feet, how [1318] many more feet, that is, longer than you determined by your actual measurement—that is the Garside tie?

Objected to as repetition—sustained.

Q. I believe you testified that the measurement as given by the field-notes and the patent of that tie to that U. S. Monument is longer than the one that you made by actual measurement?

Same objection.

By the COURT.—It is preliminary—objection

(Testimony of Lloyd G. Hill.)

overruled. Defendant excepts.

A. I did.

Q. Now, assuming that the line that is drawn from the Crown Point No. 2 corner stake down to the Corner No. 6 of the Lotta is a correct end line of those various claims which border upon it—I will ask you if the Garside measurement is the correct one, would it follow that you could tie up to these corners you found on the ground or would it throw the Monument No. 2—at what place?

Mr. SHACKLEFORD.—We make the objection heretofore made, that all reference to any corners except the corner of the Lotta is incompetent, irrelevant and immaterial for the reason that it appeals from the patent notes and from the field-notes that the Lotta was the first survey made and that all other claims were made by tie to the Lotta, therefore the Lotta is the key claim of the series.

Objection overruled. Defendant allowed an exception.

Q. I say if the distance that is given from the U. S. Monument down to the corner of the Crown Point is a correct distance, would it locate that corner of the Crown Point about where it is now and where the stake is found? [1319]

A. No, it would not—it would locate the corner of the Crown Point approximately 125 feet—

Q. In what direction?

A. In a northwesterly direction or down Gold Creek—it would have a tendency to throw that corner further down Gold Creek.

(Testimony of Lloyd G. Hill.)

Same objection. Objection overruled. Defendant allowed an exception.

Q. Then, if that is true, the correct distance, these monuments you found on the ground would be out of joint?

A. Then, if their notes from Corner No. 2 of the Crown Point, if the call in the patent notes were taken, or the posts as they exist on the ground along that line that I have been able to find were followed, it would have a tendency to throw the whole group of claims included in Surveys No. 87, 88, 89, 90 and 91 approximately 70 feet in a northwesterly direction, making them conflict with the Forrest and the Etta and all those subsequent surveys bordering on the northwest end of the claims and also throw the entire group further down Gold Creek.

Q. Now, Mr. Hill, in the patent in this case, the patent to this bunch of claims, it appears that Mr. Garside in making these surveys used a magnetic variation of 30° east. I will ask you now, if you take the variation at which Mr. Garside made these surveys, assuming that to be the correct one, and then take his courses and distances and commence down here at Corner No. 6 of the Lotta claim, run up the side lines as indicated on this plat "N" as far as Corner No. 2, as to whether or not you would discover those stakes and run over the same line as Garside, in surveying for patents— [1320] Corner No. 2 of the Crown Point, I mean?

(Testimony of Lloyd G. Hill.)

Same objection. Objection overruled. Defendant excepts.

A. It would be practically the same line Garside had; it might be off a little in regard to measurement or alignment, but you would find the stakes all right without any doubt, you would find the stakes.

Q. I understand you to say, in making your survey here, upon the data which you used in making this Plat "N," you used a different variation—what variation was that?

A. Well, we found the true variation to be 31-34—the variation around this section is increasing a little, the magnetic variation, from year to year and it is now 31-34 east of north.

Q. Now, I will ask you, taking Mr. Garside's magnetic variation of 30° as is indicated in the patent that covers this group of claims and commencing at any one of the monuments that you found upon the ground of the Lotta claim and which you have testified concerning and run those lines with that variation and turn the angles as indicated in the patent, whether or not that would give you the piece of ground that we are contending for as the Lotta claim or some other piece?

Objected to on the ground stated in the last objection and as leading. Objection overruled. Defendant allowed an exception.

A. Yes, sir, it would give you practically the same piece of ground, except a small excess that would

(Testimony of Lloyd G. Hill.)

have to be cast off—this claim is a little longer—26 feet.

Q. You were questioned at length by Mr. Hellen-thal in cross-examination from this drawing that is found in Book of [1321] Deeds No. 7 at page 151, and which is drawn upon a leaf and page of that book and is referred to in the patent to this group of claims—I will ask you if you have made any examination of that drawing since you were examined by Mr. Hellenthal? A. I have.

Q. Have you also compared that drawing with the certified copy of the official plat upon which the patent in this case is based and that is marked in this case as Plaintiff's Exhibit "B"?

A. I have; yes, sir.

Q. Now, without asking you particularly as to any defects or variances or differences that you found in them, I will ask you to state briefly to the Court what you have found regarding this drawn plat in the record book that I have referred to in this question.

Mr. SHACKLEFORD.—We object to any testimony varying the notes given in the plat, which is a part of the patent, etc.

By the COURT.—The certified copy of the plat in connection with the field-notes will be admitted, but it will be a matter of argument as to which is controlling. The objection will be overruled. Defendant allowed an exception.

(Testimony of Lloyd G. Hill.)

Q. Just answer the question.

A. In reference to the Lotta on the plat shown in the record, the creek is really platted out about 130 feet wide, Gold Creek. The call from Corner No. 5 to Gold Creek is 1200 feet, whereas on the certified copy of the plat attached to the field-notes the call is one thousand feet to Gold Creek. The northeast side line of the Lotta claim in the plat attached to the record gives a call of south 23-45 [1322] east and the same line on the adjoining claim gives the call of north 33-45 west, whereas the plat attached to the field-notes, certified plat, gives the call of north 33-45 so that the map within the record is contradictory to itself; it shows right up in the record—it is self-evident. The drawing itself is a drawing to a scale, is not authentic by any means—you couldn't determine anything from it.

Q. Take your ruler there and apply the scale to this map that is in the record book, drawn in the record, and see how far it would be from the two lower corners of the Lotta claim to the creek as it is sketched in there, and give which corner you are measuring from to the edge of the creek?

A. From Corner No. 5 in the southwest side of the Lotta it would be a distance of 1050 feet to the east side of Gold Creek.

Q. To the centre of the creek what would it be?

A. To the centre of Gold Creek the distance would be, as near as I can determine from scaling, 1115 feet.

(Testimony of Lloyd G. Hill.)

Q. What does it say in the book?

A. The book is marked 1200 feet.

Q. Now, Mr. Hill, I will ask you if in this certified copy of the plat upon which the patent to this group of claims is based and also in the plat that is incorporated in the record of the patent, I will ask you if the Ebner mill is referred to in the way of a tie and appears also upon each one of those plats?

Mr. SHACKLEFORD.—We make the same objection, that the description of the Lotta only ties to certain points and any ties to the other claims are subsidiary to the initial claim.

Objection overruled. Defendant allowed an exception. [1323]

A. The Ebner ten-stamp mill is shown on the certified plat of the surveyor general's, with the field-notes—it is also included within the field-notes.

Q. Where is that page that gives the call?

A. And it is also included in the patent to the claim lying to the northeast of the Lotta lode known as the Taku lode, Survey No. 88.

Q. It is referred to sometimes as the Taku Gold & Silver? A. Taku Gold & Silver.

Q. You have it on your Plat "N" marked Taku lode? A. Yes, sir, we didn't have room.

Q. Has there ever been, since you have been in this country, any mill upon this claim other than the mill that is there now?

Same objection. Objection overruled. Defendant excepts.

(Testimony of Lloyd G. Hill.)

A. No, sir.

Q. Now, I will ask you, taking that mill as one of the monuments and one of the ties that is made in running up this line from Corner 6—

By the COURT.—Better prove the dimensions of the mill.

Judge WINN.—He called it a ten-stamp mill.

By the COURT.—Is the call in the patent any particular part of the mill?

Judge WINN.—(Reading from the patent.) Beginning where a description of Lot No. 88, at a post marked No. 1 U. S. Survey 88 from which a ten-stamp mill bears south 49-30 east 140 feet distant, etc.

By the COURT.—The size of the mill then becomes important if there is nothing to show what part of the mill it was, if it is only 140 feet away.
[1324]

Judge WINN.—I will ask Mr. Ebner to go on the stand and give the dimensions of the mill, when I have completed Mr. Hill's examination.

Q. Now, Mr. Hill, taking this certified copy of the plat, the official plat which we have offered in evidence as our exhibit "B" and also with reference to the plat that is incorporated in the patent in the record book of deeds, No. 7, and apply the scale to those maps—I will ask you to locate approximately how far that mill is from Corner No. 2 of the Lotta which is common with Corner No. 6 of the Taku lode?

(Testimony of Lloyd G. Hill.)

Same objection. Objection overruled. Defendant excepts.

A. By scaling the distance from Corner No. 2 of the Lotta to the southeast corner of the stamp mill as it is shown on the certified plat in the surveyor general's office accompanying the field-notes, I make the distance to be approximately 470 feet.

Q. That is 470 feet from what corner?

A. That is corner No. 2 of the Lotta.

Q. How far would it be from Corner No. 6 of the Lotta—I asked you from Corner No. 2 of the Lotta or Corner No. 6 of the Taku Lode—that was my question? A. Yes, I answered that question.

Mr. SHACKLEFORD.—We move to strike the answer of the witness on the ground that there is no tie in the patent to Corner No. 2 of the Lotta.

Objection overruled. Defendant allowed an exception.

Q. Did you understand the other question? What would be the distance down to Corner No. 6 from Corner No. 2 of the Lotta? [1325]

A. I have answered that question, given the distance and everything, from Corner No. 2 of the Lotta.

Q. This corner here is No. 6 of what, the Taku lode?

A. No. 6 of the Taku lode, identical with No. 2 of the Lotta.

Q. Then from Corner No. 6 of the Lotta is what I want?

(Testimony of Lloyd G. Hill.)

Mr. SHACKLEFORD.—We object on the ground previously stated and on the further ground that there is no tie from that corner to the stamp-mill in the plat.

Objection overruled. Defendant allowed an exception.

A. The distance from Corner No. 6 of the Lotta to the southeast corner of the ten-stamp mill on the Taku Gold & Silver lode is 650 feet, from the certified map accompanying the field-notes from the surveyor general's office.

Q. I will ask you to scale it on our exhibit "N" and see from those same corners whether the distance is greater or less or the same, and give it?

By the COURT.—You are now cross-examining your own witness about his plat.

Judge WINN.—I want to show that our map is drawn placing these claims upon the ground just where they ought to be in the survey. We ask an exception to your Honor's ruling.

Exception allowed.

Q. From Corner No. 1 of the Taku to the mill, which is a tie given in the deed—I will ask you if you have made this map in respect to the same distances, etc., given in the official map and the one given in the deed?

Same objection. Objection sustained. Plaintiff excepts.

Q. There is a post marked No. 1 on the Taku lode

(Testimony of Lloyd G. Hill.)

—I want to ask Mr. Hill how far that is from the mill—that is one of the calls in the patent?

By the COURT.—You may enquire. [1326]

Mr. SHACKLEFORD.—We desire an exception. Exception allowed.

A. It is very close to the call given in the patent notes—the patent calls for 140 feet, and I make it about 120 feet or 125 feet—it is rather indefinite, the centre of the mill.

Q. At the time you made the survey for the Colorado lode claim for patent, I will ask you if at that time you knew of the existence of the Royal lode claim, Survey No. 238? A. I did.

Q. I believe that that was one of the Garside surveys that you assisted in making?

A. The Royal survey? No, I didn't assist in making it—that was made before I came to the country.

Q. Well, you knew, did you or did you not, of the boundary lines of the Royal lode?

A. I knew of the boundary lines and of the corners at that time of the Royal lode, yes, sir.

Q. You said in answer to a question that Mr. Helenthal propounded to you this morning about there being two systems of surveys and that the Corner No. 5 of the Colorado you tied to Corner No. 3 of the Last Chance property—what property do you refer to when you say the Last Chance property?

A. I refer to the Jualpa property, a placer property.

(Testimony of Lloyd G. Hill.)

Q. It is not represented on this exhibit "N"?

A. No, sir, it is not.

Q. Where did these claims lie with respect to the Corner No. 5 of the Colorado survey?

A. Those claims lie southeast and east of the Colorado survey, extending down Gold Creek.

Q. Extending down Gold Creek? [1327]

A. Yes, sir.

Q. Now, is that a set of claims that you refer to as being one system of claims?

A. Yes, sir, one survey. It is one survey consisting of a number of surveys, but it is all one system.

Q. Now, do you know as to whether or not those surveys or that survey is tied up with this U. S. monument No. 2 that the claims which we have a patent for, including the Lotta, are tied to?

A. Yes, it is.

Q. They are tied to what?

A. They are tied to the U. S. location monument in Silver Bow basin.

Mr. SHACKLEFORD.—We object to that on the ground that it refers to the tying of a different set of surveys—plaintiffs in this case are bound by the patent.

Objection overruled. Defendant allowed an exception.

Q. I will ask you whether or not you know whether this system of the Last Chance surveys were patented before or after the Colorado?

(Testimony of Lloyd G. Hill.)

Same objection and also as not the best evidence.

Objection overruled. Defendant allowed an exception.

A. The Last Chance system of surveys I think was patented in 1889; the Colorado was patented in 1904 or surveyed for patent, rather, in 1904.

Q. How does the Colorado claim lie with reference to the senior patents of the Last Chance and Royal lode?

Same objection; objection overruled. Defendant excepts.

A. The Colorado is between, lies between and is bounded on the east end by the Royal lode surveyed in 1891, the corners established, [1328] and is bounded on the west at one corner by Survey No. 142, surveyed in 1889.

Q. Now, I will ask you if you know where the corner posts of what is called the Millsite lode, Survey No. 383 and the Webster Millsite, Survey No. 76-B, are?

Objected to as not redirect.

Judge WINN.—I ask the privilege of asking the question.

By the COURT.—Is there a call in the patent to any corner of the millsite?

Judge WINN.—Yes, sir.

By the COURT.—You may enquire.

Q. I ask you if you know where any of those corner posts of those particular claims I have mentioned are?

(Testimony of Lloyd G. Hill.)

Mr. SHACKLEFORD.—We object on the ground that the notes and plat and patent are binding upon the plaintiff and they cannot locate it by reference to other surveys, and also on the ground that the Lotta is the key claim in the survey and ties made to other claims cannot affect the Lotta on the ground.

Objection overruled. Defendant allowed an exception.

A. Yes, sir, I am familiar with the corners marked in red here of the Webster Millsite and the Millsite lode; they are still standing upon the ground and are tied up with relation to the Lotta survey.

Q. I will ask you if you have examined the survey sufficiently well to tell how many ties there are made there, without looking over the survey?

Same objection, and leading; overruled. Defendant excepts.

A. There is one tie that ties the Taku claim and Corner No. 2 of the Webster Millsite, and both of these stakes are [1329] standing on the ground and are marked and the distances as given in the patent notes of the Taku, where the same distance and course is run out on the ground. I found the corners of the Webster Millsite all right; it was a prior survey to the Lotta or the Taku Gold & Silver—they fell in very closely, within a few feet.

(By Mr. HELLENTHAL.)

Q. Corner No. 1 of the Webster is not on the ground, the post?

A. The post No. 2 of the Webster is there, yes, sir.

(Testimony of Lloyd G. Hill.)

Q. No. 1, is that there?

A. No. 1 is there, yes, sir.

Q. In the ground? A. In the ground.

Q. Marked? A. Yes, sir, marked.

Q. How is it marked?

A. Well, it is pretty hard to tell just how it is marked; it is obliterated, but you can see it is marked and the position is right.

Q. The Millsite location was subsequent to the Lotta, was it not? A. Yes, sir.

Q. The mill on the Taku Gold & Silver has been enlarged during the last few years, has it not, the stamp-mill? A. Yes, I believe it was.

Q. This is not the mill that was there at the time this Lotta survey was made?

A. Well, it falls in practically the same position.

Witness excused. [1330]

[Testimony of F. J. Wettrick, for Plaintiff.]

Testimony of F. J. WETTRICK—Direct Examination of Mr. WETTRICK.

(By Judge WINN.)

(To following the omission on page 131 of the original transcript [printed record, page 278] indicated by * * * .)

Q. Have you ever had anything to do with the surveying of that claim or running out the lines?

A. Yes, sir.

(To follow the omission on page 132 of original transcript [printed record, page 280] as indicated by * * * .)

(Testimony of F. J. Wettrick.)

Q. (Repeated.) Now, I will ask you to state what if any corner posts, stakes or monuments you found upon any of the lines of the Lotta lode claim?

A. I found three posts on the southeasterly end line there, the southerly end line—two corner posts and one lode post; also one post on the other side of the road, northwesterly from the corner No. 5.

Q. Come over here and indicate on the map what they are numbered on this exhibit.

A. Starting with Post No. 5 of the Lotta—I find No. 4—

Q. What is Number 4?

A. Number 4 is the lode line post, the southeasterly end line, end of the lode line, marked by a post known as the lode line post. I find also post No. 3 of the Lotta and this witness corner No. 2 and stake by the road.

Q. What do you mean by witness corner?

A. A witness on the intersection of the Forrest end line and the Lotta side line—this was referred to.

Q. Did you see anything of a cabin near any one of these posts? [1331] A. Yes, sir.

Q. Which one?

A. There was a cabin near post Number 5 of the Lotta.

(To follow the omission indicated on page 136 of original transcript [printed record, page 284] by * * * being a continuation of the direct examination of Mr. Wettrick by Judge Winn.)

Q. I will ask you to state briefly to the Court and in your statement you may refer to this exhibit “N” and tell just what you did in making this survey and

(Testimony of F. J. Wettrick.)

what corner posts, stakes, etc., if any, you discovered? A. You ask about the Lotta?

Q. Yes.

A. I discovered corner post #3 of the Lotta, corner post No. 4 of the Lotta and corner post No. 5 of the Lotta, which are the three posts.

By the COURT.—Is Number 4 a corner post?

A. Number 4 is the lode line post; posts Number 3, 4 and 5 I found, which were the posts found on the southeasterly end line of the Lotta claim. I retraced, re-ran the southwesterly side line and found a post at the intersection of the Forrest end line and the Lotta side line; I found post No. 6 of the Lotta in place; I ran the end line, the northwesterly end line of the Lotta claim and found a post Number 1 of the Lotta, a post in that position, Number 1.

Q. Is that the lode line?

A. That is the lode line of the Lotta claim, that being the northwest centre end line, the end of the lode.

Q. Did you run any other lines of any other group of claims that was patented with the Lotta, which are indicated on [1332] this exhibit "N"?

A. Yes, sir.

Q. Just state to the Court what you did in that respect and what, if anything, you found in the way of monuments or corner posts.

A. Having found corner post No. 6 of the Lotta and post No. 1 as indicated here of the Lotta I re-ran the end lines of these two claims—

Mr. SHACKLEFORD.—You are speaking of the claims above the Lotta?

(Testimony of F. J. Wettrick.)

A. Yes, the Taku, Keystone, Crown Point—those three.

Mr. SHACKLEFORD.—We make the objection that the evidence is incompetent, irrelevant and immaterial, the reference to the location of any claims above the Lotta, for the reason that the Lotta is the first claim of the group, the key claim of the group and all other claims are tied to it.

Objection overruled. Defendant allowed an exception.

A. I found a post as indicated—Number 1—here on the end line of the Taku lode, at the intersection of the end line and the Webster Millsite. Continuing at the distances given in the patent notes I found post 2 of the Keystone lode, which is identical with No. 6 of the Crown Point lode in place; continuing that line according to the notes given in the patent field-notes the required distance I found post No. 2 designated here of the Crown Point in place. I also ran lines from this general line and according to the notes given in the patent field-notes and the plat and located Corner No. 2 of the Webster Millsite and Corner No. 4 of the Webster Millsite.

Q. You say in the patent notes—the patent notes are what you [1333] have reference to?

A. The notes of surveys Number 88, 89 and 90 and also 87 of the Lotta, also 76—B the Webster Millsite.

Q. In running this line I will ask you if you made any observations as to the mill which is referred to in the survey—they call it “lot” in the field-notes, Lot No. 88, which reads as follows: Beginning at the

(Testimony of F. J. Wettrick.)

description of Lot 88, at a post marked No. 1 U. S. Survey No. 88, from which a ten-stamp mill bears south $49^{\circ} 30'$ east 140 feet distant; thence has course north $56^{\circ} 15'$ east 127.85 feet to intersect the southwest boundary line of Lot No. 76-B at north 45° west 174.9 feet, from which post No. 1 of the said claim 300 feet to a post marked No. 2 U. S. Survey No. 88—I will ask you if you retraced any of the lines indicated by the courses and distances just read off to you, Survey No. 88?

Mr. SHACKLEFORD.—We object to that on the grounds last stated and on the further ground that the question refers to the Taku lode, No. 88 and Webster Millsite No. 76-B, the Taku lode being a subsequent survey to the Lotta survey and the Webster Millsite being an independent survey and on the further ground that if the Webster Millsite is a previous survey its position on the ground has nothing to do with the position of the Lotta, for the reason that the Webster Millsite, when patent was officially given, was in conflict with the group and so much of it as was in conflict was held out of the group.

By the COURT.—I hold that the Lotta and Crown Point are all one survey and the Millsite intersecting the boundaries of it and being marked at the points of intersection that the evidence may be admitted.
[1334]

Defendant allowed an exception.

A. I retraced enough of the lines and also re-located the mill on the ground.

(Testimony of F. J. Wettrick.)

Q. In making this location of the mill upon the ground, how did you find that location in relation to the field-notes and survey, etc., as are indicated in the patent to this property?

Same objection; objection overruled. Defendant excepts.

A. The location of the mill upon the ground is practically identical with the location of the mill as given upon the patent plat and in the patent field-notes.

By the COURT.—As located where?

A. As located from the corner of the Lotta, the Taku or any point along that line.

Mr. SHACKLEFORD.—I understand that the witness has just been answering the question as located from the point bearing off the Webster Mill-site?

The WITNESS.—No, sir.

Mr. SHACKLEFORD.—The notes will show that there is no location from the Lotta at all, except by inference.

The WITNESS.—By calculation.

Q. You have got through answering the question that the Court propounded to you? A. Yes, sir.

Q. Regarding this exhibit “N”—you have gone over this with Mr. Hill and investigated this map and plat and from your knowledge of these surveys, etc., I will ask you as to whether or not that map indicates the objects and lines, etc., as they exist upon the ground?

Objected to; objection sustained.

(Testimony of F. J. Wettrick.)

Q. What did you find about this map, whether it is a correct [1335] or incorrect map?

A. That map represents the location of the corner posts and the important monuments as they exist upon the ground as near as human agency can get them.

Q. You have examined the patent to this property and the courses and distances and monuments, etc., referred to therein, as well as the little plat that is drawn on the record as part of the patent, or as referred to in the patent at least? A. Yes, sir.

Q. Now, the variation that these lines were run was a magnetic variation of 30° by Mr. Garside—do your courses on this Plat “N” and the courses at which you run the various lines—was it run at such a variation, 30° or otherwise?

A. It was run upon a different variation.

Q. Why did you run it at a different variation?

A. Because the variation as given by Garside is not the variation found upon the ground to-day by an observation upon the sun.

Q. Do you run it from a true meridian or how? Explain to the Court how this was done.

A. In re-running the lines upon the ground as we have delineated them upon the map there an observation upon the sun was made, in order to determine the true meridian, and from such observation, having obtained the true meridian, it was found the magnetic variation is something larger than Garside used and we ran entirely independent of the needle; however, that does not make any difference.

(Testimony of F. J. Wettrick.)

Q. Who took the observation?

A. I don't know. [1336]

Q. You say you ran without the needle, you mean the magnetic needle—you don't necessarily need that in running your courses and distances?

A. Certainly not, the courses and distances are obtained by actual observation of the reflection angle.

By the COURT.—You started at No. 6?

A. Yes, sir.

Q. This greater variation that Garside allowed, if it did affect this plat, would twist it around on that axis of No. 6, would it, throw it to the right or left?

A. Yes, sir.

Q. With that difference of variation?

A. Yes, sir—it would throw it to the right.

Q. That would throw it down the creek?

A. Yes, sir—the difference in variation is a little over a degree and a half.

Q. Do these variations, that is the magnetic variation, remain the same from year to year or does it change? A. It changes slightly.

Q. What do you mean by magnetic variation?

A. That is the variation from the true north—that is the difference between the magnetic meridian and the true meridian, due to the change in position of the magnetic north pole.

Q. You know something about the instructions given to surveyors now, do you? A. I do.

Q. You are a deputy U. S. mineral surveyor and also a deputy land surveyor, under the laws of Alaska? A. Yes, sir. [1337]

(Testimony of F. J. Wettrick.)

Q. Are there any instructions about your using a magnetic needle in running courses and distances now? A. No, sir.

Q. You can use it if you want to?

A. No, you can't use it.

Q. Then, you run everything by the true meridian?

A. Certainly.

Q. You find that by taking the sun?

A. Yes, sir, certainly.

Q. And then, you have a formula you go through and find out your courses and distances, certain calculations and observation to determine the true north?

A. The reading of the needle is given in the field-notes, but this is merely to help out the prospector or anybody who wishes to relocate.

By the COURT.—It wouldn't affect a patent and survey that had been made when they did observe that regulation, would it, or when they did use the magnetic needle?

A. No, sir, that is merely a difference in the observation of the needle. Now, two instruments might not give the same reading, the instruments don't all read the same along the needle, and having determined the true north, it doesn't make any difference about the needle at all, the lines you retrace will be all the same.

Q. Do local surroundings have anything to do with the needle?

A. Yes, sir, certainly; occasionally you get near a magnetic rock or some steel in your pocket will re-

(Testimony of F. J. Wettrick.)

flect the needle so it doesn't record it accurately and moreover you don't read the needle any more than 15 minutes—the vernier on the needle is not very closely graduated.

Q. Now, I will ask you, if you will refer to the pages of the [1338] notes Garside made, upon which the patent in this case is based, and take into consideration of course his courses and distances and the magnetic variation he used and would go upon this ground and commence say at corner No. 6 of the Lotta and undertake to retrace the lines of this survey by using the data that you obtained from those field-notes—I will ask you if you could do so?

Mr. HELLENTHAL.—We object as incompetent, irrelevant and immaterial.

Objection overruled; defendant allowed an exception.

A. I could.

Q. Suppose you should take that data and take Mr. Garside's variation and take, of course, the monuments you find on the ground that you have testified concerning, I will ask you whether or not the survey actually made upon the ground would vary any from the survey as indicated in the patent?

Mr. HELLENTHAL.—We renew our objection and further upon the ground that Garside as the agent of these parties—they are bound by what he did and if he made any mistakes, it is their mistakes and on the further ground that he is including data that is not in evidence at all.

(Testimony of F. J. Wettrick.)

Objection overruled; defendant allowed an exception.

A. It would vary slight as to courses and distances, vary slight, very slightly.

Q. How about the ground actually contained in such survey in comparison to that that is in the patent or as described in the field-notes of the survey made by Garside, would it be the same ground or otherwise? A. The ground would be the same.

Q. You have examined as you have stated the patent to this [1338½] property and also the little plat that is referred to in the plat and as found at page 151 of the records of Book 7 of Deeds and also the paper which has been introduced in evidence in this case as Plaintiff's Exhibit "B" and referred to as the official plat and map of the survey in question and the particular property in question. Now, I will ask you if in the examination of these and comparison of them that you have found, that they correspond or there is any difference?

Mr. SHACKLEFORD.—We object to any testimony with reference to the difference between the plat attached to the patent and referred to in the patent, incorporated and made a part of the patent and preliminary field-notes of the surveyor general's office, filed at the time the survey was made, some time before the issuance of the patent; and we further object to it on the ground that the plaintiff in this case is attacking his own title and his own exhibit, and we give notice that we demand the production of the patent or a certified copy of it from the land

(Testimony of F. J. Wettrick.)

office before any further attack is made upon the verity of the patent as offered in evidence by the plaintiff.

Judge WINN.—I will state in reply to the demand of counsel to produce the original patent—if we can find it we will produce it; Mr. Ebner has already testified he didn't think he could produce it.

After argument the objection was overruled.

Mr. SHACKLEFORD.—I ask that the record show that we object to the testimony on the ground that it is incompetent, irrelevant and immaterial, and for the reasons stated in the former objections, and that all the proceedings in the land office are merged in the patent and the parties are bound [1339] by the patent.

Objection overruled. Defendant allowed an exception.

A. I have examined it, yes, sir.

Q. Now, I wish you would take the official survey, the certified copy of which you have, upon which this property is patented—I wish you would take this certified copy you have and compare it with the one drawn upon page 151 of the records and referred to in the patent and see whether or not there is any difference, or whether or not they are the same?

Same objection; overruled; defendant excepts.

A. I have already compared it and find a variance between courses and distances and a variance between the location of the creek.

By the COURT.—A variance between the courses and distances in the plat or that called for in the

(Testimony of F. J. Wettrick.)

recorded patent?

A. I mean there is a difference between the courses and distances upon that plat in Book 7 of the records, a difference with those given on the certified copy—they are not the same.

Q. But I will ask you if you have compared the body of the patent to see whether the courses and distances are the same as that in the certified copy of the plat that we have offered in evidence?

A. I have compared it but they are not all the same.

Q. The courses and distances are not all the same as they are on the certified copy? A. No, sir.

Judge WINN.—The certified copy I refer to is the certified copy from the surveyor general's office and is marked Plaintiff's Exhibit "B." [1340]

Q. If you will, explain to the Court just what you did see—whether it makes any material change in it?

. Same objection; overruled; exception.

Q. I find here that the course of the northeasterly side line of the Lotta claim is designated in the drawing in that book as south 23—45 east; in the certified copy from the surveyor general's office, Plaintiff's Exhibit "B," it gives the course as south 33—45 east for the same line, making a difference of 10°—that is to say that the course as given in the drawing attached to the book is in error ten degrees if the certified copy from the surveyor-general's office is correct; and furthermore I find that the parallel line to that one, which is in error 10°, the southwesterly

(Testimony of F. J. Wettrick.)

side line of the Lotta, is given as south 33-45 east in accordance with the description in the certified copy from the surveyor general's office, showing that the error is in copying.

By the COURT.—Then there is no conflict as regards this line that one side claims the dam is inside and the other side claims it is out?

A. The dam is not shown.

By the COURT.—It is the southwest side line that is claimed to run across the dam?

A. Yes, sir.

Q. (By the COURT.) They are both 33-45 as regards that line?

A. The courses are identical, yes, in both.

Q. You are a deputy U. S. Mineral surveyor—I will ask you if you are acquainted with the instructions of that office pertaining to errors in surveys and how and when they are corrected? Answer that yes or no. [1341] A. Yes.

Q. In case there is any error discovered either in the field-notes, courses and distances, or in the plat that is attached to your field-notes or the plat upon which patent application is made, how are those errors corrected?

Objected to as not the best evidence.

By the COURT.—That practically is embodied in written regulations?

The WITNESS.—Yes, sir.

Objection sustained.

Q. You say there are written instructions pertaining to that? A. Yes, sir.

(Testimony of F. J. Wettrick.)

Q. I will ask you if you know it to be a rule that deputy U. S. mineral surveyors are furnished with these copies and requested to follow them out?

Same objection; sustained.

Q. Have those regulations been substantially the same for the last twenty-five years?

A. No, they are different from year to year.

Q. Mr. Hill I think testified when he was on the witness-stand that he assisted you in running out and measuring up the call or tie that is made in the field-notes that govern the patent in this case from Corner No. 2 of the Crown Point lode, Survey No. 90, to U. S. Government monument up the creek there called U. S. Monument No. 2 I believe—I will ask you if you are the same Wettrick he referred to that he assisted in making that run of that line?

A. I think so.

Q. Just tell the Court if you found the courses and distances there the same as indicated in the field-notes and plat or— [1342]

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial, there being no tie to the Lotta which is the original survey, the key claim of the group and locates all the other claims.

Objection overruled. Defendant allowed an exception.

Q. State to the Court what you found.

A. I found that the courses and distances from the U. S. Mineral monument No. 2 to which the Crown Point is tied upon the ground is different from that given in the field-notes and returns of Mr. Garside

(Testimony of F. J. Wettrick.)

in the official survey of those claims different in course and in distance.

Q. What is the difference, do you know?

Same objection; overruled. Defendant excepts.

A. Yes, sir, the difference in the course to Corner No. 2 of the Crown Point to the U. S. Mineral Monument is some 27 minutes. The distance in chain or distance upon the ground is 125 and a fraction feet.

By the COURT.—Do you find it more or less?

A. I find it less. The black figures are the figures as I find them and the red ones as given by Garside. I find the distance 6405.7 and Garside found it 6530.6 feet.

Q. (By the COURT.) The difference in variation, do you find it throwing the corner of the Crown Point south or north from what he called it? The difference in the course from the mineral monument to your corner of the Crown Point as you find it upon the ground, would it throw that corner south or north of the line he established?

A. It throws it slightly to the south.

Q. (By the COURT.) All of which might be explained by turning the group on an axis at the southwest corner of the Lotta? [1343]

A. On the corner No. 2 of the Lotta? Yes, that would remedy the difference, yes.

Q. Well now providing you have established the end line of the Crown Point, Keystone, Taku and Lotta the northwesterly one and providing this creek is established on the ground and then taking into consideration this difference that you find in the run-

(Testimony of F. J. Wettrick.)

ning from point No. 2 of the Crown Point to this U. S. Monument providing that end line should remain the same—now would the difference between yours and Garsides have a tendency to throw these claims up or down the creek?

Same objection; objection overruled; defendant excepts.

A. It would throw it down the creek as shown by the difference in the distance.

Q. What did I understand you to say in answer to the Court's question?

A. If I understood the Court's question properly, he asked whether or not the difference in the bearing and distance I found there wouldn't throw the group of claims down the creek, which is the same as turning upon an axis providing the corner at No. 5 remains the same, throwing it around; that would necessarily be the case because if you lengthen those distances you shove these down the creek—assuming that corner No. 5 is taken as the axis, it would throw it down.

Q. Now, if Garside's measurement is correct and his course is correct, about where would it throw corner No. 2 of the Crown Point, from which the call is made to this U. S. Monument?

Same objection; objection overruled. Defendant excepts. [1344]

A. It would throw it down creek about 70 feet.

Q. Would that throw all the claims down the creek?

A. Certainly, because they are all tied together.

(Testimony of F. J. Wettrick.)

Q. Taking the course and distance as correct as described by you and Mr. Hill what effect does that have upon this group of claims, if any, as to their location upon the ground—does it change them from the patent any at all?

A. You ask what effect it has upon the location?

Q. Yes.

A. It has no effect upon the location at all—it simply shows how it is upon the ground with the corner stakes and with reference to the monument.

Q. I have forgotten whether you had anything to do with ever making a tie from what Mr. Hill testified is an open cut or tunnel—

A. Tunnel.

Q. (Continuing.)—on the Royal lode claim, made to one of the corners of the Lotta—do you know anything about that?

A. Yes, sir.

Q. Just state to the Court what you know about it.

Mr. SHACKLEFORD.—We object to it because it is a tie to another claim in controversy, which is the key claim.

Objection overruled. Defendant allowed an exception.

A. Having found Corner No. 3 of the Lotta and back-sighted corner No. 5 of the Lotta, the end line of the Lotta claim, I ran a line to the tunnel as shown upon the plat, the tunnel on the Royal lode and found that it is 122 feet, if I remember correctly the distance, I find upon the ground, whereas here it is 132—there is some 10 feet difference in the tie. [1345]

(Testimony of F. J. Wettrick.)

Q. You have no means of knowing when Garside made that call as to what part of this tunnel he made the call to or from, do you? A. No.

Q. What is the size of that tunnel, do you remember, approximately?

A. I believe it is 5x7; I don't remember exactly—some 30 feet long.

Q. Has there ever been a slide there so as to in any wise efface it?

A. Yes; the face of the tunnel has caved in—it is an old tunnel and has caved in a little.

Q. Can you tell whether there was an open cut before the mouth of the tunnel was reached?

A. Yes; the tunnel starts in on the ground where the angle is about 35°, so that the point where you commence to break ground is some 10 or 15 feet further down the hill from the point at which you get under cover, which some might call the beginning of the tunnel, and others may say the point where you break ground is the beginning of the tunnel.

Q. Providing you took one point as the point of the call and Garside took another, would that account for any differences you found in the distance?

A. Certainly; that would account for the difference.

Q. How is the ground, the topography of the ground, where this corner post No. 3 of the Lotta is—the one to which this call is made to this tunnel?

A. It is on a fairly steep sidehill, an angle of probably 25 or 30° from the line.

Q. What is the topography—describe it briefly—

(Testimony of F. J. Wettrick.)

of the Lotta, [1346] lode claim and especially the southeasterly end of the Lotta lode claim, after it crosses the creek?

A. The southeasterly end of the Lotta is found upon a fairly steep sidehill, the end line of the Lotta going straight up over the hill. The average angle, the ravine, is about 25° , 25 to 30° on the end line of the Lotta. The incline would be from corner No. 5 and 3.

Q. How is the topography in and about where the corner post of the Lotta No. 5 corner post is?

A. That is comparatively level.

Q. Did I ask you whether or not you saw an old house anywhere near corner post No. 5 of the Lotta, an old cabin?

A. I have testified I have seen that house; yes.

Q. Have you any call from any part of the Lotta survey, when you were making this survey, to that old house and found out where it is located with respect to corner No. 5 of the Lotta? A. Yes, sir.

Q. I wish you would explain that.

A. It is shown on the plat as I found it by course north $5^{\circ} 7'$ east 96.2 feet distance.

Q. (By the COURT.) That would be on the Lotta.

A. Yes, that would be on the Lotta.

Q. Now, I ask you if in surveying a piece of ground, either mineral or agricultural, if surveyors ever consider that when they are running on a particular course and distance, that they mention at a certain distance from a certain corner they cross the creek, or they cross a gully or they strike a building

(Testimony of F. J. Wettrick.)

—I will ask you if that is considered a tie of that mining claim. [1347]

Objected to as incompetent, irrelevant and immaterial. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you to define what a tie of a particular mining claim means, to any particular monument?

Same objection. Objection sustained. Plaintiff excepts.

Q. I will ask you if there is anything in the rules and regulations furnished you, to govern you in surveying, defining how a mining claim is to be tied up in a survey.

Objected to as not the best evidence. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you, as a surveyor, you consider that when you are running from some given corner post of a mining claim and running out on the side lines, in making a note in your field-notes at a certain distance you cross a field or gully, that that is considered a tie of the mining claim such as is required by the rules and regulations?

Same objection. Objection sustained. Plaintiff excepts.

Q. I will cut out "such as is required by the rules and regulations," and just ask him if he as a surveyor would consider that as a tie.

Same objection. Objection sustained. Plaintiff allowed an exception.

Judge WINN.—That is all.

(Testimony of F. J. Wettrick.)

Cross-examination of Mr. WETTRICK. .

(By Mr. HELLENTHAL.)

(To follow the first omission on page 137 of the original transcript [printed record, page 284] as indicated by * * * .)

Q. Now, Mr. Wettrick, you have been examining the notes in that patent. Look at that chart again. [1348] A. You refer to this plat here?

Q. Yes; that little plat in the patent notes, in the patent itself? A. In the record?

Q. Yes—you find one course there 23-45?

A. Yes, sir.

Q. That is wrong, you say?

A. Yes, I believe it is.

Q. And on the same line you find the correct course—that is, it is 33-45?

A. On the other claim?

Q. Yes, on the other claim? A. Yes, sir.

Q. That is right? A. On the other claim.

Q. That is a mistake in putting down a “2” where the recorder should have used “3”? A. Yes, sir.

Q. And that is all that is the matter with that plat in that regard,—it is a mere error in getting a wrong figure there? Anybody can see that, can’t they?

A. That is what that is, an error in the figures, putting the figures down.

Q. What did you say about running those lines on the ground? Do you tell me that there was any way that you could run the line from corner 5 to 6 according to the course given in the patent notes and arrive at corner No. 6, when you start from corner 5—of

(Testimony of F. J. Wettrick.)

the Lotta I am speaking now—when I say corners, I mean the posts as found in the ground—you found 5 and 6? [1349] A. Yes, sir.

Q. When did you first find 6? A. Last year.

Q. You had found it when you testified last fall?

A. Yes, sir.

Q. At that time you ran from the Forrest stakes on No. 5?

A. From Forrest stake No. 1, you mean?

Q. What you claim to be the side line of the Lotta, the witness stake?

A. Yes, I ran that altogether—I picked up my line from Corner No. 6 to No. 1 and picked up my line at No. 2.

Q. Sometimes you ran one way and sometimes another?

A. Yes; you have to adjust yourself to the topography of the ground.

Q. In running that southerly side line of the Lotta you sometimes ran out from one stake and sometimes from another—is that true?

A. I ran that all through first from the corner No. 5 of the Lotta.

Q. And you ran that according to those stakes that you found on the ground last fall, the same stakes that are now there— isn't that true?

A. That is the way I ran last year; yes, sir.

Q. What is the course you took in running that line?

A. From the observation the course I found—

Q. What is the actual course you found between

(Testimony of F. J. Wettrick.)

those stakes—the course you ran on?

A. The course on the plat north 31–36 west.

Q. What is the course given in the patent?

A. North 33–45.

Q. Then the course you ran is different from the course given [1350] in the patent by something over 2°—is that not true?

A. There is a difference in the course of something like 2°.

Q. If you start at corner No. 6 and used the course given in the patent and ran 1500 feet, you will land several feet above corner No. 5, won't you?

A. If I take south 33–45 east, yes.

Q. If you take that course you will land several feet above 5.

A. If I start out on that course; yes.

Q. You will throw the claim several feet up the hill running on that course from No. 6? A. Yes.

Q. What is the course with reference to the end lines given in the patent? A. South 56–15 west.

Q. Does that fit with the course you ran in running from the end line of the Lotta on the stakes?

A. No.

Q. How many degrees difference?

A. About the same difference.

Q. Then, your end line was not given on your plat as run by you between the stakes, a difference of some 2° in course from the course given in the patent for that same line? A. Yes, sir.

Q. As to distance, how does it compare, the distances as they occur upon the ground?

(Testimony of F. J. Wettrick.)

A. The distances as they occur upon the ground to-day are slightly less than given and called for in the patent notes.

Q. (By the COURT.) On the end line?

A. Yes, sir.

Q. What is the distance between stake No. 2 and 6 as you find them on the ground there and as you have delineated them [1351] on exhibit "N"?

A. 2 and 6? 2 of the Lotta, you mean?

Q. Yes.

A. No. 2 of the Lotta is not in place.

Q. Suppose you ran from the point where No. 2 is on your plat—on your plat what is the length of the end line?

A. The length of the end line is 290.9 feet, I believe—that distance is not given on the plat, because Corner No. 2 is not in place, so that manifestly you couldn't connect that point—there is nothing there to connect to.

Q. What is the difference between 1 and 6 as you fit them on the ground? A. 140.9 feet.

Q. What is the distance between those two posts on the patent? A. 150.

Q. You are about ten feet shy on distance?

A. 9.1 feet.

Q. The other post is not on the ground and you add 150 feet for that?

A. That is what the patent calls for.

Q. You follow the patent in that regard?

A. Certainly.

(Testimony of F. J. Wettrick.)

Q. In the other one you pay no attention to the patent?

A. Certainly; I follow the patent stakes.

Q. You followed the stakes you found on the ground? A. Yes, sir.

Q. You have never seen those stakes except a year or two ago was the first time you saw them?

A. Yes, sir.

Q. And it has been a good many years since the patent was issued? [1352] A. Yes, sir.

Q. You didn't see when they were put there?

A. Yes, sir.

Q. You mean you followed the stakes you found on the ground at this time? A. Yes, sir.

Q. You don't mean to say that those are the original stakes put there at the time the patent was issued?

A. If you don't want to call them patent stakes, I will call them something else—call them stakes on the ground.

Q. The stakes on the ground as you found them on that end line down the creek—that line you ran between the stakes on the ground, between 1 and 6, don't agree within 2° with the notes called for in the patent as to course? A. No.

Q. Nor do they agree within ten feet as to distance—the distance of 150 feet? A. That is right.

Q. As to the other course you plat on your plat, Exhibit "N," from stake 1 to 2, that is merely an arbitrary course and an arbitrary distance you put there, following the patent notes of 150 feet?

(Testimony of F. J. Wettrick.)

A. Certainly.

Q. The only reason that your exhibit "N" agrees with the patent as to distance in that regard is because you follow the patent? A. Certainly.

Q. There is no stake there? A. No.

Q. The course, however, that you assume is an extension of the [1353] course that you have between 6 and 1—is that true? A. That is true.

Q. That throws that course off also 2° as compared with the course in the patent?

A. That is right?

Q. The line from 2 to 3 of the Lotta—is there a stake where you have staked No. 3 of the Lotta?

A. Yes.

Q. There is a stake there? A. Yes.

Q. You turn at right angles when you get to what you call No. 2, where there is no stake, you turn at right angles and run to stake No. 3—is that the way of it? A. No, that is not the way of it.

Q. You don't turn at right angles? A. No.

Q. How do you turn?

A. I told you Number 3 is out.

Q. Number 2 is out? A. Yes, sir.

Q. There is a stake where you put No. 3?

A. Yes, that is right.

Q. At No. 2 didn't you turn at right angles?

A. Number 2, I said, was out.

Q. But at that corner where that No. 2 should be, did you turn at right angles? A. No.

Q. How much do you differ from turning at a right angle? A. I don't turn any angle there.

(Testimony of F. J. Wettrick.)

Q. How does it appear on your plat—does it appear at right angles? [1354]

A. It is at right angles there; yes, sir.

Q. Now, the course from Corner No. 2 to 3 is what course?

A. That is a course from the lower side line, 33-45.

Q. Now, assuming the course you ran on—south 33-45 east—is that the course given? A. Yes, sir.

Q. You actually run one of the side lines on the patent course? A. No.

Q. What is the course, then, that you run that side line on? A. You mean the northeast side line?

Q. Yes.

A. I said I didn't run that side line.

Q. Didn't run it at all? A. Yes, sir.

Q. Just put it in?

A. Connected it at two points.

Q. Platted it in—didn't run it at all?

A. Certainly not.

Q. What is the course of that side line as it lays on your plat?

A. That course is south 31-36 east.

Q. You just put that down there to make it parallel with the one you did run? A. Certainly.

Q. When you get to Corner No. 3 you have some more stakes there in the ground? A. Yes, sir.

Q. What is the distance between Corner No. 3 and 4 given in your plat? A. 140.38 feet, [1355]

Q. What is the distance in the patent?

(Testimony of F. J. Wettrick.)

A. 150 feet.

Q. You are off about 10 feet there on distance?

A. Yes, sir.

Q. What is the course you are on?

A. I run on north 57-53 east.

Q. The difference between your course that you run there and the course in the patent is about 2°?

A. About 2° difference.

Q. A little over 2°, is it not?

A. The difference between 56 and 58—about 2°.

Q. 2° and 2'—that is the same, the same difference occurs when you run the line between 4 and 5, the same difference in degrees?

A. Substantially the same difference.

Q. What is the difference in the distance—what is the distance you find between 4 and 5 stakes?

A. 144.9.

Q. A little over 5 feet off there on distance?

A. 5.1 feet.

Q. You then don't agree within 5.1 feet on that course with the patent notes—is that not right?

A. Yes, sir.

Q. In running from Corner No. 5 to the creek, how many feet have you got?

A. Corner No. 5? 693 feet, I believe, to the centre.

Q. How many feet are given in the patent plat? I am talking about the plat in the book first, part of the patent offered in evidence, that small plat?

A. It is 1200 feet. [1356]

Q. A discrepancy there of a few feet?

(Testimony of F. J. Wettrick.)

A. Yes, sir.

Q. How many feet? A. About 300 feet.

Q. It is more than that, is it not?

A. Yes, about 500 feet difference.

Q. Your No. 2 as you have it platted on this map is in the centre of the creek?

A. As it is platted there it is in the centre of the creek.

Q. How far is that corner from the creek as platted in that other plat in the patent notes?

A. About—40 feet, I believe.

Q. A difference of 40 feet in that regard?

A. No, it is 50 here—it is hard to make out what it is.

Q. A difference of 50 feet, then, in that regard?

A. Yes.

Q. With reference to this plat of the surveyor general's office which has been offered in evidence, where does that southerly side line cross the creek?

A. At one thousand feet.

Q. How much does your plat No. "N" differ from that plat in that regard?

A. 300 feet—a little over.

Q. What is the distance between stake No. 2 and the creek on the exhibit from the surveyor general's office? A. 50 feet.

Q. You, then, also differ from that exhibit to the extent of 50 feet in your survey? A. Yes, sir.

Q. The courses given in the plat from the surveyor general's [1357] office are identical with the courses given in the patent—are they not?

(Testimony of F. J. Wettrick.)

A. You mean the courses given in that?

Q. Yes. A. No, they are not.

Q. The courses given in the patent notes offered in evidence, the notes to the patent? I am speaking now of the notes in the patent itself.

Judge WINN.—The same as in what plat?

Q. The Lotta claim—the plat that is offered in evidence as the official plat of the surveyor general's office—exhibit “B”—the courses given there are identical with the courses given in the field-notes that are copied in the patent to the Lotta claim—is that not true?

A. As far as I have examined them they are; yes.

Q. And the distances are the same?

A. As far as I know.

Q. Then your exhibit “N” differs from the plat of the surveyor general's office in regard to courses and distances to the same extent it differs from the patent—is that not true?

A. I don't know what you mean by the patent.

Q. The field-notes given in the patent that is offered in evidence, the patent to the Lotta?

A. Yes, sir.

Q. The same discrepancy—is that not true?

A. As far as I have examined them; yes.

Q. The difference between the courses given in your exhibit “N” or the difference given in the exhibit “N” and the course given in the plat offered in evidence—exhibit “B”—is something over 2°—is that not true? [1358] A. That is true.

Q. The stakes as found upon the ground within

(Testimony of F. J. Wettrick.)

the survey made of the Lotta, the stakes now found upon the ground, throws the courses some 2° off from what they would be if platted in accordance with the plat of the surveyor general's office?

A. Yes, sir.

Q. And the distance as found between stake 5 and 6 is off 26 feet according to your survey as compared with the survey of the surveyor general's office?

A. That is true.

Q. And the distance between 1 and 6 is off something over 5 feet—is that not true?

A. 15 feet, is it not? It would be the same.

Q. Both of the end lines as you found them upon the ground measured by the stakes are 15 feet short, approximately? A. Yes, sir.

Q. As compared with the plat from the surveyor general's office? A. Yes, sir.

Q. And as to the measurement of the creek, you are 300 feet off on the southerly side?

Objected to as repetition. Sustained.

Q. Now, I will ask you to take that plat from the surveyor general's office and patent and examine it and find anything, any one point—I don't care what it is—wherein the Lotta as platted by you on exhibit "N" and the Lotta as platted in the surveyor general's office, or the notes of the patent—I will give you a broad scope, where these plats agree in one point, call my attention to it.

A. You mean the plat given as exhibit "N" compared with the notes as given in the official record?
[1359]

(Testimony of F. J. Wettrick.)

Q. Yes—find any one point there as to courses and distances? A. It will take some time.

Q. You can't offhand state any one point in which they agree?

A. No, sir; I haven't read only a quarter of a page of that record there.

Q. You paid no attention to any of these notes except the few stakes you found on the ground in making the survey, any of the notes or field-notes or patent, in determining the existence of the Lotta claim—is that not true?

A. No; that is not true.

Q. Did you read those notes before you made the survey? A. I read the official notes—

Q. Then, can't you answer my question?

A. As given in the surveyor general's office, but I didn't read those you want me to compare now. I am not testifying that those are copied correctly.

Q. Copied correctly from the original patent?

A. Yes, sir.

Q. You have to assume that I am asking you to compare with the notes as copied in this book, without any reference to the original patent—if that is produced later, we may have to modify it.

A. I have not read those over.

Q. But you have read the notes of the surveyor general's office? A. Yes, sir.

Q. Can you answer my question with reference to this? Can you point out to the Court one single place, one single course or distance or anything else, upon your exhibit "N" that agrees with the plat

(Testimony of F. J. Wettrick.)

or field-notes of the surveyor general's office?
[1360]

A. Not exactly, no; I don't think any of it agrees exactly.

Q. None of it agrees exactly?

A. No, I believe not.

Q. You ran the line from the mineral monument to a stake in the Crown Point? A. I did.

Q. And how many degrees was Mr. Garside off in that regard? A. Slightly.

Q. Is that stake in the Crown Point in place?

A. Yes, sir.

Q. Is there a stake there? A. Yes, sir.

Q. When you say to the corner of the Crown Point, you mean you ran a line from the mineral monument to a stake where you supposed the corner ought to be? A. Yes, sir.

Q. And you tied up a stake you there found on the ground with the mineral monument?

A. Yes, sir.

Q. But you have no knowledge whether that is the original patent stake of the Crown Point—you never saw that before, until two or three years ago?

A. I have no knowledge such as would be gained, such as having been there when the survey was made.

Q. You have a belief upon the subject but not knowledge? A. A strong belief; yes, sir.

Q. Which of these stakes along the end lines are in place here—what stakes did you find there?

A. Those marked in red upon the plat.

(Testimony of F. J. Wettrick.)

Q. Those marked in red upon the plat you find stakes for? A. Yes, sir. [1361]

Q. You don't know whether any of those stakes are the stakes put there at the time of the issuance of the patent? A. No.

Q. You don't know whether any stake marked in red on any part of this map was there at any time prior to three years ago? A. I do not.

Q. Do you know when the Royal survey was given? A. The date is given upon the map.

Q. Do you know whether that is the correct date or not?

A. No, sir; I have seen the date upon the official plat.

Q. 1891—is that the date given on the official plat?

A. Yes, sir.

Q. You found that tunnel ten feet off—is that right? A. No.

Q. What did you find off—you don't certainly find that stake off, do you?

A. You say you find the tunnel ten feet off. That is not what you find. You find the point to which I measured as the face of the tunnel is ten feet different from the point given by Garside when he measured to the point he called the face of the tunnel—I don't call it off.

Q. When you measure to a tunnel what do you measure to?

A. Why, when I measure to a tunnel, to locate it on an official survey, I usually take the mean between the distance from the point where you com-

(Testimony of F. J. Wettrick.)

mence to break ground and the point where you get under cover—the mean of that is the commencement of the tunnel.

Q. That is how you measured this one—used your regular system in measuring this one?

A. Yes, sir.

Q. And you found it was ten feet further from the stake than [1362] it ought to be?

A. Ten feet less, if I remember correctly.

Q. A difference of ten feet?

A. A difference of ten feet, yes, if I remember correctly.

Q. What lines did you actually run upon the ground that that map is made from, you and Mr. Hill?

A. All the lines you want on the map?

Q. Yes, are they indicated in any way on there?

A. Not exactly, the lines between the red posts here.

Q. The unbroken lines—are not those the ones you actually ran?

A. Not exactly; sometimes it is due to the configuration of the ground you have to traverse.

Q. That is actual surveying on the ground?

A. Yes, sir.

Q. And that is shown by—

A. Post marked in red there.

Q. All the actual surveys you made upon the ground are marked by unbroken lines—is that not true?

A. Yes; some of these were probably connected by traverse due to the configuration of the ground, the topography.

(Testimony of F. J. Wettrick.)

Q. You actually run all three, running a traverse line,—all the lines marked by unbroken lines upon the ground? A. Yes, sir.

Q. And all the lines you did actually run on the ground are platted upon this map by unbroken lines—is not that true?

A. I believe that is true.

Q. See if there are lines you ran actually upon the ground that are not marked on the ground by unbroken lines. If there are, I wish you would tell me what they are. [1363]

A. Yes, there are some marked by broken lines I ran, some between traverse points.

Q. What lines?

A. The line from Corner 2 of the Keystone to 4 of the Webster Millsite.

Q. You ran that?

A. Yes, and also I ran the line from Corner 4 of the Parish No. 2 to corner 3 of Survey 142 and 5 of the Idaho placer, but that is an unbroken line.

Q. That is the only ones of the unbroken lines you actually ran on the ground?

A. Yes, I believe so.

Q. And all other measurements you actually made on the ground with reference to your testimony in this case are marked there by unbroken lines?

A. A tie to the monument is put on by an unbroken line which is run directly on the ground.

Q. That you also ran?

A. Yes; I don't see any more now.

Q. All the other matters to which you have testi-

(Testimony of F. J. Wettrick.)

fied and which you have platted upon this map are merely platted in from the notes you got from the surveyor general's office—is that true?

A. In part, yes; only I found this Lotta claim short on one end 15 feet—in order to preserve the rectangular form I have to make the other end the same, if the stake is not there to tie up to. With reservation I answer your question in the affirmative.

Q. With that reservation all the matters and things to which you have testified, either in direct or cross-examination, as to measurements upon this map or upon the ground, that are [1364] not shown upon that plat and map in unbroken straight lines—I am speaking when I say that plat, of Plaintiff's Exhibit "N"—are platted in with reference to the testimony, and everything else is in reference to the notes found in the surveyor general's office and not based upon actual measurements on the ground?

A. That is about true.

Q. Is it altogether true? If it is not, explain.

A. I mean where you find one side or one end line of a claim slightly short from that given in the field-notes, in order to preserve the rectangular shape, providing the other end line is not long, you have to shorten the other end line proportionately to preserve the rectangular shape.

Q. With the exception of straightening out or changing the line to preserve the rectangular form of the claims, you have all the other information and all the other courses and distances to which you have testified and all the other courses and distances on

(Testimony of F. J. Wettrick.)

exhibit "N," except such as appear in unbroken straight lines and such as you have already referred to, such as the line from the mill monument to the Crown Point corner—you have all that data from the surveyor general's office and is not based upon actual measurements upon the ground?

A. That is true as to the distance—as to the course, having a course at the north end line of the Lotta claim, in order to preserve that course, in order to continue that course my course would have to be preserved and it would not be the surveyor general's course.

Q. The course given by you, then, is the course of the end line of the Taku and the end line of the Keystone and Crown [1365] Point and Golden Fleece, that is the artificial course adopted by you to extend the course given by you on the Lotta?

A. Yes, and connecting up Corner 2 of the Keystone, Corner 6 of the Crown Point and Corner 2 of the Crown Point also—this line is determined by connecting those corners in a straight line.

Q. With that exception you have preserved the courses and distances in the field-notes in this plat?

A. Yes, sir.

Q. With reference to all other measurements, the same holds true, does it not? A. I guess so.

Q. You found a corner of the Idaho placer, corner No. 5—that is in place, is it not—that is a stake there?

A. That was in place last fall, corner No. 5 of the Idaho placer, yes, sir; that is in place.

(Testimony of F. J. Wettrick.)

Q. I will ask you if you did not make an affidavit in this case which reads as follows: Which said post was properly marked; and affiant further continued such survey up the southeasterly end line of the Lotta lode claim and found the southeast corner stake or monument properly set in the ground, all of which monuments, stakes, courses and distances agree with the patent of said Lotta lode claim, and that affiant had with him a copy of the location notice of the Parish #2 lode claim and after obtaining the data above mentioned, easily proceeded to and did run out the boundaries of said Parish No. 2 lode claim and found the two end corner stakes of the said Parish #2 claim and ascertained the lower or southwesterly end line of said Parish #2 claim [1366] which has been brushed out. Did you testify to that?

A. I don't remember whether I testified exactly that way or not.

Q. Didn't you make an affidavit in 823 which reads as follows, as part of this same affidavit: Affiant has this year and within the last two months checked up this work again and found all of the courses, distances, monuments, side and end lines the same as they were when he made the survey in the year 1908 and found the corner posts, monuments, etc., of the Lotta lode claim in identically the same places that the said William M. Ebner describes them in his affidavit. Did you make that affidavit?

A. I don't remember.

Q. You don't know anything about it?

A. I have recollections of making an affidavit

(Testimony of F. J. Wettrick.)

along that line. I don't know whether I did or not. I will soon tell you if you will give me a chance to look at it.

Q. I believe you have already testified that it didn't make any difference what magnetic variation you ran the line on, that doesn't change the course any?

A. The magnetic variation? No, that doesn't change the course any.

Q. It doesn't make any difference? A. No.

Q. The testimony Judge Winn sought to elicit was, it don't make any difference what the magnetic variation is, the course remains the same?

A. No, the magnetic variation has nothing to do with the true course of the line. [1367]

(To follow the second omission on page 137 of the original transcript [printed record, page 285] being a continuation of the cross-examination of Mr. Wettrick by Mr. Hellenthal.)

Q. I will now read to you from what purports to be your original affidavit in Cause 823—this occurs on page 4, about the center of the page—I will show it to you in a minute and you can examine it. All of which monuments and stakes, courses and distances agree with the patent of said Lotta lode claim. Did you so testify?

A. That is my signature on there.

Q. Did you make that affidavit? A. I did; yes.

Q. You also made the other portion of this affidavit wherein you say you checked up the work again and found it still as it had been—I will read it to you: Affiant has this year and within the last two

(Testimony of F. J. Wettrick.)

months checked up this work again and found all of the courses, distances, monuments, side and end lines the same as they were when he made the survey in the year 1908 and found the corner posts, monuments, etc., of the Lotta lode claim in identically the same places that the said William M. Ebner describes them in his affidavit. Is that true?

A. I testified to that, yes, sir.

Afternoon Session.

Q. In answer to questions by Judge Winn this morning, I understood you to say that an assumed magnetic variation, while it would make no difference if you ran your lines with a transit, it would make a difference if the lines were run by a compass?

A. Certainly; the lines of the compass would always be different [1368] from those run by the transit because the compass is not an accurate instrument.

Q. If a survey is made with a transit, it doesn't make any difference what the magnetic variation is—is that it? A. For what purpose?

Q. For the purpose of establishing a line.

A. No.

Q. Not the slightest? A. No.

Q. You use a transit—the way you survey you set up your transit, take an astronomical observation, find the true meridian and turn your angles from that—isn't that the way you do it? A. Exactly.

Q. Pay no attention to the compass whatsoever?

A. Not very much; merely as an additional check.

(Testimony of F. J. Wettrick.)

Q. When you use a compass, then, of course it is essential to know what the magnetic variation is in order to run the line and run the true north?

A. Yes.

Q. If you have the compass and know the magnetic variation, you can run a line according to the true meridian within a reasonable degree of accuracy—not with as much certainty as you can with a transit, but with reasonable accuracy?

A. Yes, sir.

Q. If there is an error in the magnetic variation you assume, it would make a difference in the line that you establish?

A. If you run with a compass, yes, sir.

Q. If you run with a transit, it would not make any difference at all? A. No. [1369]

Q. The only way you can establish a magnetic variation is to compare the needle with the true north? A. Yes, sir.

Q. In order to do that you must use a transit and take an astronomical observation?

A. That is right.

Q. The person who uses a magnetic variation, has a transit and compass both—is that right?

A. Usually he is supplied with a transit and compass, both.

Q. He goes to work and establishes the true north and sees how much that varies from his compass?

A. Yes, sir.

Q. That is what you call your magnetic variation—is that right?

(Testimony of F. J. Wettrick.)

A. Yes, the reading on the compass-box, having a telescope pointing on the true meridian, will give you the magnetic variation, unless if—there is no local attraction.

Q. If you use a transit in surveying the Lotta claim and set up at stake No. 6 and run in accordance with the courses given in the patent, the line you run would vary approximately 2° from the line you show on exhibit “N” as being the line between 5 and 6—is that right?

A. If I determine my true course before I start out, yes.

Q. And used your transit? A. Yes.

Q. The No. 5 would then be located a few feet up from where it is now, further towards No. 3—is that right? Starting from No. 6, I mean.

A. Yes, sir, that is right.

Q. On the other hand, if you use a compass and start at No. 6 [1370] and assume a variation, the variation given in the patent notes to be the correct one, the magnetic variation,—use a compass, not a transit, but a compass and start at Post #6 and run that line, you would run approximately the line you have now delineated on exhibit “N,” not identically the same line?

A. I run the same line as given in the patent notes if I assume the variation. I don’t understand what variation you said to assume. I think you said the variation in the patent, 30° —

Q. Yes.

A. Then, I would run over the same ground that is

(Testimony of F. J. Wettrick.)

delineated on the patent plat and field-notes.

Q. I don't think you got my question exactly. If you should start at Post #6 of the Lotta as you have delineated it upon your map, I mean at the point where the stake is in the ground, use a compass, not a transit, assume the variation given in the patent notes, 30° or whatever it is—if you assume that variation to be the correct one, I understand that variation is not correct at this time. A. No, it is not.

Q. You don't know what the variation was at the time the survey was made? A. No.

Q. It might have been correct, then—there are various changes from time to time? A. Slightly.

Q. If you assume that to be the correct one and start out from Post 6 of the Lotta and run a line by the compass—attempt to run by the compass—the line given in the patent notes it would take you approximately along the same line you are passing over here in going from 6 to 5 and would land you at about stake No. 5? [1371]

A. It would land at stake No. 5.

Q. I wouldn't say within a foot, but about that?

A. Yes, sir.

Q. If a compass were used? A. Yes, sir.

Q. But if a transit were used it would land how many feet above—

A. Using a transit with the same variation it would land you in the same place?

Q. With a true meridian it would land you 2° further up? A. Yes, sir.

Q. With a transit you use the meridian?

(Testimony of F. J. Wettrick.)

A. Yes, sir.

Q. You take an observation of the sun and turn your angles from a true meridian?

A. I do when I make a survey.

Q. That is the way deputy surveyors always do?

A. That is the instructions.

Q. The instructions are, in fact, you have to use a transit? A. Yes, sir.

Q. And have to turn your angles from a true meridian? A. Yes, sir.

Q. Those are the instructions you have in connection with the survey? A. Yes, sir.

(To follow the omission on page 138 of the original transcript [printed record, page 285] as indicated by * * * , being part of the redirect examination of Mr. Wettrick by Judge Winn:)

Q. Mr. Hellenthal has gone into quite a dissertation upon the [1372] use of a transit, magnetic variation, etc. He asked you a long question this morning regarding this exhibit "N" and also asked you to take that map and look over the patent, the property that is in controversy in this case, including the whole bunch of claims mentioned on exhibit "N," and find out whether any one thing at all that was in the patent has a course and distance, etc., that would agree with this exhibit "N," and in that connection, also, he asked you if in running those lines there was not a difference of 2° in the course you took and I think that in the patent—have you any further explanation to make to Mr. Hellenthal's

(Testimony of F. J. Wettrick.)

question concerning the matters I have just indicated to you?

A. Yes, I don't believe I was fully understood. I meant to say that if I started at the corner posts as they are upon the ground with my transit and took the variation or the course as given by Mr. Garside in his field-notes and ran the southwesterly side line of the Lotta claim according to the variation and the course given by Garside, arriving at Post 5 and turning the horizontal angle as indicated by him in his field-notes on the official plat, turning that angle according to his own field-notes, I would hit the corner post No. 3 of the Lotta claim, as well as the lode line post No. 4—I would hit it within a very—I would hit the edge of it,—not the centre of it, because the posts were leaning a little bit probably, but I would hit substantially the position the posts are found in. Now, if I take a compass or if I take my transit and take an observation at Corner #6, determine the true north and run over identically the [1373] same line I have run over upon the notes given by Garside, I will find that my record in the note-book will be the courses as I delineated them on the plat between the same posts—I always run between the same posts—and if I turn the angle, not knowing what angle to turn, but turn the angle to accord with the compass, I will turn the same angle as instructed by Garside in his field-notes. Now, having determined by an observation what course I should note in my note-book under that course which he calls 33-45, I would give a slightly different course

(Testimony of F. J. Wettrick.)

upon the ground. It is the same ground, likewise the end line of the Lotta on the ground is the same line, but my notation in the note-book is different, within 2° , from that that Garside chose to put in his note-book; whether he took an observation or not, I don't know—the presumption is he did.

Q. About what is the rule of allowance on the question of the magnetic variation per annum?

Objected to as not the best evidence. Objection overruled. Defendant allowed an exception.

A. The annual difference in variation is different in different sections of the country. Here it is somewhere around five seconds per annum. It changes—it is not constant.

Q. So if you take that general average, why of course you compute the time at which the survey was made down to the present time and it would hardly make up the difference, would it?

A. No, it would not.

Q. Now, Mr. Hellenthal asked you this morning quite extensively about these stakes, as to whether or not you knew that any of these stakes that you found and described were the original stakes, the corner posts that were set by the surveyor [1374] who made the survey for a patent. I will ask you if you saw anything on any of these stakes that led you to believe as a surveyor that all those stakes were the original corner posts or stakes?

Objected to. Sustained. Plaintiff excepts.

Q. I will ask you whether or not—you may state to the Court what marks or indications or anything

(Testimony of F. J. Wettrick.)

you saw upon any of these posts that you found.

A. At corner No. 5 of the Lotta as indicated upon this plat there is a stake 2x4 which was once painted white and upon which there was a black legend painted in black paint. Survey or S. 87, and that stake was rotted off, partly rotted off at the bottom and nailed on alongside. I forget whether it was new or not; it was alongside a larger stake, a 5x5, 2 feet above ground, also painted white. The stake No. 3 had on it the same notation S. 87, that is all I could distinguish, if I remember rightly, but it had on it S. 87; likewise the stake No. 6, which is a 5x5, 2 feet above ground in a mound of rock, had on it S. 87.

Q. I will ask you how the inscriptions that you saw on these posts compare with those that are usually put on corner posts in making surveys for patent—how did they compare with them?

Objected to as incompetent. Overruled. Defendant excepts.

A. It is always required to put upon the corner post the number of the survey and the number of the corner,—that is, if I were making a survey now for patent I would designate that C. 5 S. 87, likewise the others, according to their respective corners. [1375]
(By the COURT.)

Q. Who owns the Forrest lode?

A. That belonged to the Ebner Company.

Q. Who owns the Etta?

A. That is in the same group.

Q. Who owns the Webster Millsite?

(Testimony of F. J. Wettrick.)

A. That belongs to the Ebner Company or the California & Nevada Copper Company, I don't know how the title stands.

Q. Who owns the Royal? A. I don't know.

Judge WINN.—I think those lower claims used to belong to John Maloney and some other people but we understand this company has a bond on them.

The WITNESS.—I am mistaken about the Forrest. It belongs to the Dora Gold Mining Company; the same is true of the Etta—the Etta and Forrest are in the same group of claims. I was mistaken.

(By Judge WINN.)

Q. And the Humboldt at that time used to belong to the Humboldt Gold Mining Company, a corporation? A. Yes, sir.

Q. That is the Webster Millsite and the Humboldt lode referred to here? A. Yes, sir.

Q. And I think the Bluff lode?

A. No, I don't think so—I don't believe so.

Q. You were presented this morning with this affidavit—I don't know just what portion Mr. Hellen-thal read to you—it is on page 4 (handing witness paper). Read over the part you think Mr. Hellen-thal read to you. Read it aloud and if you [1376] have any explanation to make of it, do so.

A. He read to me this: And while he was deputy mineral surveyor make a survey of the lower or southwesterly side line of the Lotta lode mining claim, commencing at a point on the said side line, where the end line of the Forrest lode claim inter-

(Testimony of F. J. Wettrick.)

sects said side line of the said Lotta claim, at which point of intersection affiant found witness post marked S. 87 toward the side of the Lotta and Survey No. 545 toward the side facing the Forrest, and the said lower side line of the Lotta had been brushed out and affiant without any difficulty whatever found the southwest corner post and monument of the Lotta lode claim mentioned in the affidavit of William M. Ebner herein, which said post was properly marked, and affiant continued such survey up the southeasterly end line of the Lotta lode claim and found the southeast corner stake or monument properly set in the ground and marked, all of which monuments and stakes, courses and distances agree with the patent of said Lotta lode claim, and that affiant had with him a copy of the location notice of the Parish No. 2 lode claim and after obtaining the data above mentioned easily proceeded—

Q. That is sufficient—all of which monuments and stakes, courses and distances agreed with the said Lotta lode claim. I will ask you if you have any explanation to make of that?

A. Yes. The language here doesn't exactly convey the exact meaning that I wish to convey and which I have all the time testified to, and that is, the monuments and stakes and courses and distances agreed substantially with the patent of the Lotta lode claim, which they do, and the affidavit was not dictated by me—if the word I have always used, substantially, is omitted, it should be here. [1377]

Q. I believe you stated to Mr. Hellenthal that on

(Testimony of F. J. Wettrick.)

the lower side line of the Lotta, which is between 5 and 3, that according to your actual survey made on the ground there is a difference in that and the measurement given in the patent or the patent field-notes of 15 feet? A. A little less than 15 feet.

(By Mr. HELLENTHAL.)

Q. Who paid you for the work you did in 1900?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Defendant excepts.

Q. What was the explanation you made to Judge Winn in regard to running that southwesterly side line of the Lotta with a compass and with a transit and in making the notations in your note-book, in regard to what you did?

A. I will explain that to you. I believe I explained it about this way—that if I started at Corner No. 6 in the course given by Mr. Garside—

Q. You mean the course given in the plat?

A. 33-45 east, running that course on that line and turning the angle, arriving at corner No. 5 and turning the angle as given by his notes, that I would get the course as given, as he gives it, in the patent field-notes and I would also hit those corners. Now, I said if I go back to that point and make an observation and run over the same line, with my true meridian established by an observation, running over the same line and not knowing what angle to turn, but turning the angle to the post which I found there before, that I would turn the same angle as given by Garside in the field-notes, so that it is merely a

(Testimony of F. J. Wettrick.)

difference as to the notation in the note-book, if you are not very careful [1378] about your meridian; that is to say, that angle would always be a right angle—that angle there is practically a right angle.

Q. However, if you should start at Corner #6, take an observation, run the line according to the true meridian, having taken that observation and used the courses given in the patent, you would not arrive at corner #5, would you?

A. No; if I start just at that one corner and take an observation and run on the course as given in the patent, I would not arrive at that corner.

Q. If you should start at corner No. 5, take an observation, run on the course as given in the patent according to the true meridian, you would not arrive at Corner #3?

By the COURT.—We have been over that.

Q. I want to ask a question with reference to the end lines of the Taku, Keystone, Crown Point and Golden Fleece—the Golden Fleece you didn't survey? A. No, sir.

Q. You did these other lines and found the stakes in the ground marked with red circles?

A. Yes, sir.

Q. If you start at stake No. 2 of the Lotta and use your transit, run the line according to the true meridian and use the course given in the patent, you would not hit any of those stakes that you have marked there with the red circles, would you? A. No, sir.

Q. That would be approximately 2° away from it?

A. Yes, sir.

(Testimony of F. J. Wettrick.)

Q. On the contrary, if you should start at stake No. 2 of the Lotta, use a compass— [1379]

Objected to as repetition.

Q. I want to propound this question: If one would start from corner No. 2 of the Lotta with a compass, use the variation referred to in the patent, run the lines called for in the patent notes of the Taku lode, the Keystone and Crown Point, observing that variation, running the line with a compass, taking the distances there given, would he approximately strike the post that you have indicated by the red circle—with a compass, not with a transit—would he or would he not?

By the COURT.—He may answer.

A. I don't know whether he would or not with a compass. I never used a compass; it depends how accurately you handled the compass. If you will let me explain it in my own way, I will save you time.

Mr. HELLENTHAL.—Go ahead.

A. If I set up at No. 2 as you have referred to it, at No. 1 or No. 6 and taking a variation as 30°, running according to the field-notes of the patent, I would approximately hit all those stakes on the end lines of those claims.

Q. If you ran by the needle?

A. If I ran on a course of 57-16, I believe it is given, with a variation of 30°.

Q. With the needle—by using a needle?

A. Well, that is misleading, by using a needle.

Q. By using a compass?

A. You use your transit just the same.

(Testimony of F. J. Wettrick.)

Q. You mean you would strike those posts approximately if you ran the lines by the compass or a needle, not with a transit but with a compass and used the variations given in the patent and observed the course given in the patent—is that [1380] not right?

A. I don't run it by the compass. I run it by the transit.

Q. But if you did run it by the compass?

A. I don't know what would happen.

Q. What did you do with that 14 feet you missed on the end line of the Lotta, in checking up the ground?

A. I said it substantially checks—practically checks with the stake, corner post, of the Crown Point—falls in where the notes call for, practically, substantially, within a few feet.

Q. Have you your notes? A. No, sir.

Q. Would you mind producing your notes?

A. It would take me some time to prepare it so you could understand it.

Q. How about the end lines, the widths of those other claims, the Taku, the Keystone and the Crown Point—are they substantially as wide as you lay them on the ground here as they are in the patent, within a few feet?

A. Within a few feet, yes—within a limit of error. I don't know exactly what the difference is now. I only know it as to the Lotta; there is a little difference in the other claims, I believe.

Q. How much difference?

(Testimony of F. J. Wettrick.)

A. Something around 15 feet.

Q. They are all off?

A. If one is off, the other would be off.

Q. You think 14 or 15 feet—that is a reasonable check? A. I didn't say a reasonable check.

Q. What would you consider a reasonable check?

A. The instructions of the surveyor general's office gives you [1381] one in a thousand.

Q. Then that would be very reasonable?

A. They don't call it a reasonable check, as considered in the instruction.

(By the COURT.)

Q. You say you located No. 2 of the Crown Point?

A. Yes.

Q. Did you help prepare that plat?

A. Yes, it was prepared in my office.

Q. Does that show what distance Corner No. 2 is from Gold Creek on the side line of the Crown Point and the end line of the Crown Point, where it crosses Gold Creek—from the end line does it show how far Corner No. 2 is from the creek?

A. On the end line? No, I haven't that data, that I know of.

Q. It is your contention that these four claims are all one survey? A. Yes, sir.

Q. You don't know whether it agrees with the plat in the surveyor general's office in regard to that or not—did you ever measure it from that corner of the Crown Point to the creek, down either line?

A. I measured it from the corner of the Crown Point on the side line. I don't know that I have

(Testimony of F. J. Wettrick.)

measured it from the corner of the Crown Point to the centre of the creek there.

Q. What was the distance on the side line, from No. 2 of the Crown Point to the creek?

A. I don't know what it is. I have it in my notes—it is not given on this plat.

Q. Did you ever compare it with the plat in the surveyor general's office to see if that checked with respect to the [1382] creek? A. I did not; no.

Witness excused.

**[Testimony of William M. Ebner, for Plaintiff
(Recalled).]**

(To follow the omission on page 164 of the original transcript [printed record, page 310] indicated by * * * , being part of the direct examination of William M. Ebner (recalled), by Judge Winn.)

Q. (Repeated.) I will ask you, Mr. Ebner, if you have ever seen any corner posts or stakes on the northwesterly end line of the Lotta, Taku lode, Keystone lode, Crown Point lode and Golden Fleece mining claims? A. I have.

Q. When did you first see those corner posts?

Mr. SHACKLEFORD.—We object to all the posts except the posts on the ground that is indicated in the Lotta survey.

Objection overruled. Defendant allowed an exception.

A. The first time I saw any of those posts was in 1891; that is my first recollection and then I saw more of them in 1892.

Q. Can you step over to this map and indicate to

(Testimony of William M. Ebner.)

the Court just what corner post along the end line of those claims you saw first in 1891?

A. Yes, sir, I can.

Q. Point them out and designate them.

Same objection. Objection overruled. Defendant excepts.

A. I saw this post here, which is just opposite the Webster dam, marked here Post No. 6 and the 6 is in the Crown Point lode. I also saw this post just across on the north side of the creek of the present Ebner dam, marked Post No. 2 and [1383] the way I come to see this, we sometimes would take this trail, the old trail, and follow up this flume that was building there and then cross over where the Ebner dam is now and just a little below where the old Coulter dam was—in the same place, in fact.

Q. This corner No. 2 of the Crown Point—you say you have a dam there in the creek? A. Yes, sir.

Q. Or is it near a dam?

A. There was a dam placed there, I think, about the winter of 1896,—the timbers were there last year.

Q. Then, I understand that is not the dam that diverted the water from Gold Creek to the flume, which you carried down and used at the mill—I mean the one at the Crown Point?

A. I thought you meant the other one; that is the present Ebner dam, right there where that is and that is where Coulter built his dam; that is the present Ebner dam on the Golden Fleece.

Mr. SHACKLEFORD.—That is before your time that that was built there, before your dam, the

(Testimony of William M. Ebner.)

Coulter dam? A. Yes, it was before my time.

Mr. SHACKLEFORD.—We move to strike the answer of the witness.

Motion denied. Defendant allowed an exception.

Q. Then, you spoke about some other old dam—that is further up the creek, is it?

A. That is the dam that I put in myself,—that is the one I thought you had reference to. That is not on this plat.

Q. Can you give any description to the Court of what kind of a post you saw there at No. 2 on the Crown Point, which is near the dam on the Golden Fleece? [1384] A. Yes, sir.

Q. Describe it as accurately as you can.

A. I think it is a three by three, white painted post and about 6 or 8 inches above ground.

Q. Have you ever seen any inscription on it?

A. I have.

Q. What did you see?

A. I don't remember.

Q. This is all in 1891 and 1892 you are testifying about? A. Yes, sir.

Q. Could you discern what it was?

A. Not the first time I saw them. I know they were there. I know that post was there, but I couldn't tell what the inscription was now. I did know at the time but I wouldn't want to swear to that now. I knew what it was then; that was in 1891 and 2.

Q. I believe you say you saw some others?

A. More particularly in 1891.

(Testimony of William M. Ebner.)

Q. I have forgotten how many you did mention in '91—did you just mention two?

A. Yes, I mentioned two, that is connected with this. I saw the Webster Millsite post, these two red posts there—this post right here above the road, I remember that, and I remember that was marked 76/B, I know it was marked “B,” and I inquired why it was marked “B” and I found it was in connection with the Humboldt lode—that this was a millsite for the Humboldt lode and was therefore marked “B.”

Q. The Millsite there for the Humboldt never belonged to the Ebner people? A. No. [1385]

Q. The old Richmond or Humboldt or Webster Millsite as it is commonly called—

A. This Millsite lode came here and that is one corner of the Lotta there. The Millsite lode here was afterwards owned about 97 or 98; there was a little fraction in there and it was located by the Humboldt Mining Co.—the Roadway Survey 543.

By the COURT.—Is it tied to the group at all?

Judge WINN.—Yes, sir, it has a common end line.

Q. Does it belong to the Ebner Gold Mining Company—the Roadway? A. No, sir.

Q. What company does that belong to?

A. It belongs to the Dora Gold Mining Company.

Q. You are a stockholder in that company, I believe you testified? A. Yes, sir.

Q. You gave those two now that you saw in '91—

(Testimony of William M. Ebner.)

what about any other of these stakes down the line here?

A. Those I have mentioned are about all I remember now in '91.

Q. Come on down as far as the Lotta now.

A. I saw this one alongside the flume here, this stake on the Crown Point, in 1891. That is the first time I saw that. We came down there, myself and a man named Sanders. As to the Lotta a man named Sid Miller went with me and pointed it out to me.

Q. Outside of the Lotta stakes, did you find any other corner stakes at any other times, in '90 and '91, except those you have described?

A. No, I was not interested sufficiently at that time except by observation I observed these along the Basin road and these that were on the old trail here.

Q. When did you ever see any of these after '90 and '91, along [1386] about that time?

A. I have seen them continually year after year, and more particularly in 1892, myself and some other parties bought what is now called the Dora group, and in that way, in looking where those boundary lines were, is where I became acquainted with this corner, the northwest corner.

Q. That is the Lotta? A. Yes.

Q. Did you ever see any other stakes along on the hillside other than those you have already described

(Testimony of William M. Ebner.)

as being the corner stakes of the Lotta—did you ever see any stakes along there?

A. Not along here, but after we got up here, up on top of the mountain, it is very steep here—

Q. On the Crown Point?

A. Yes, on the Crown Point.

Q. You are pointing to the southerly side line of the Crown Point? A. Yes, sir.

Same objection. Overruled. Defendant excepts.

Q. What stakes did you find there?

A. In 1893 I took Charles Garside and we ran up here and found three stakes here in place, and for the purpose of ascertaining some other matters, we went around an old trail that was up here and came on top here and we found and designated by the marks on it—

Objected to as hearsay. Objection sustained as to what he said.

Q. You put your finger at a corner. I wish you would designate what corner that is. [1387]

A. That is the southeast corner of the Crown Point.

Q. Now, I will ask you, from the different things you have seen, the posts which you have just described in your testimony as being those along what we call the northwesterly end line of the Crown Point, the Keystone and the Taku and those with respect to the Millsite and others you have described—what about their position, have they been in dif-

(Testimony of William M. Ebner.)

ferent places or have you seen them in the same places over these years? A. In the same places.

Judge WINN.—That is all.

[Testimony of H. T. Tripp, for Plaintiff.]

(To follow the omission on page 176 of the original transcript, [printed record, page 324] being part of the direct examination of H. T. Tripp, by Judge Winn.)

Q. That is you found stake Number 5?

A. Yes, sir.

Q. And as indicated on this map, being one of the corner posts of the Lotta lode claim?

A. That was shown to me and called the corner; that is all I know about it.

Q. It is marked a corner on this plat "N"?

A. Yes, sir. Then, we brushed from that out a certain distance, I don't know how far—I was just there to see what was going on and get a general idea of the lay of the land—I don't remember the distance but we went out there and we found something there, that was a corner. I don't remember whether the stake was set or not, but any way we put a stake out there—we carried stakes with us.

Q. You mean to say you re-established that corner and took out the stake there? [1388]

A. That is what we were doing—we had some stakes with us; we piled some rocks up there. I remember about the stake was set, we piled some rocks around it. I can't remember about the stake that was there, whether there was or not.

(Testimony of H. T. Tripp.)

Q. Did you find a stake there?

A. I don't remember that we found that stake.

[Testimony of Ed Webster, for Plaintiff.]

(To follow the omission on page 238 of the original transcript [printed record, page 391] being part of the direct examination of Ed Webster, by Judge Winn.)

Q. (Repeated.) Just point to this map and tell what stakes you saw. Give them by the numbers you saw set there at that time.

A. This one here (indicating), this—this on one side and two on the other.

Q. Of the Webster Millsite?

A. Yes, on the line with that and this one here—that is just back of our house.

Mr. HELLENTHAL.—We object to this as incompetent, irrelevant and immaterial, having no bearing on the matter in issue and not explaining the location of the Lotta claim.

Objection overruled. Defendant allowed an exception.

Q. The last stake you mentioned as having seen set is the one marked 1 in red ink at the intersection of the southwesterly end line of the Webster Millsite with the Taku lode claim?

A. Yes, this one here—that is just behind our cabin. Our cabin is about there, about 50 feet from this bridge across here and this was marked on the stake there and this was marked.

Q. Is there any particular object nearby this

(Testimony of Ed Webster.)

stake that I [1389] mentioned to you, at the intersection of the line of the Webster Millsite with the upper end line of the Taku lode that makes you remember where it was located? I mean that one (indicating).

A. That is just behind our cabin on the little knoll that slopes up—it is in plain sight—it was there for years.

Q. And up to about what time do you remember that being there?

A. I left there in 1898—we sold the mine then and I left there.

Q. Was there any other stake or stakes there along the upper end line of the Webster property, along there on the Keystone or Crown Point?

Mr. HELLENTHAL.—This is all objected to as immaterial.

Objection overruled. Defendant allowed an exception.

A. This one here was right opposite our dam—our dam was right here. This sets on the bank and there was a stake for the intersection of the Crown Point and Taku. Those are the only ones I know anything about in the lode claim. We always called them the Taku Consolidates.

(To follow the omission on page 240 of the original transcript [printed record, page 393] indicated by * * * being part of Ed Webster's direct examination by Judge Winn.)

Q. Do you remember the relative location of the

(Testimony of Ed Webster.)

stake marked 2 and 6 in red ink, which is the common stake between the Crown Point and Keystone at the upper end of the line?

A. Yes, this one here, these two and this is just above the old Thorp dam on the hillside.

Q. And about what distance from the three corner posts you spoke about which are on the northeast end line of the Millsite lode? [1390]

A. I couldn't say just exactly what distance there was. I never measured that.

(To follow the omission of page 241 of the original transcript [printed record, page 394] as indicated by * * * , being part of the cross-examination of Ed Webster by Mr. Hellenthal.)

Q. (Repeated.) Do you remember his setting up the transit on the different posts and sighting along the lines?

A. Yes; I was right along with him when he done the lines.

Q. You know he used a transit in making the survey, an ordinary transit?

A. Yes, surveying instruments he used.

Q. The stake you remember him sighting is indicated on this map as being the common stake of the Keystone and Crown Point, adjoining the northerly end lines—the common stake adjoining the northerly end lines of the Keystone and Crown Point—is that the stake? A. Yes.

Q. And that stake you say was set—you remember

(Testimony of Ed Webster.)

the location of that stake from its relative position to your dam? A. Yes, sir.

Q. That is the same dam that is now used?

A. No, the same dam that was used by the Humboldt people.

Q. How far from the dam did that stake set?

A. Well, I couldn't exactly say.

Q. I mean approximately?

A. Oh, it is quite a little distance up, just on the slope of the hill, on the creek up on the side.

Q. How many feet horizontal measurement?

A. It may be 90 or 100 feet—something like that—from the creek. [1391]

Q. When you say 90 or 100 feet, do you mean measuring along the surface of the ground or do you mean that far horizontal measurement? The mountain is pretty steep.

A. I couldn't say positively how far it was. I am guessing at that; I never measured it.

Q. It wasn't any further than that, anyhow?

A. I wouldn't say any further; it might be, though.

Q. It wasn't much further or much less?

A. Somewheres along there.

Q. Between 90 and 100 feet? A. Yes, sir.

Q. And that was in what direction from your dam?

A. It would be in a northeast direction, I should say, from that—it is up the creek above the dam. *ag*